TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1899

No. 887

THE HOUSTON AND TEXAS CENTRAL RAILWAY COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE [illegible] SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

FILED MAY 16, 1900.

(16,890.)

(16,890.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 306.

THE HOUSTON AND TEXAS CENTRAL RAILROAD COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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1 *Caption.*

THE STATE OF TEXAS, }
County of Travis. }

At a term of the district court of the 53rd judicial district, begun and holden at Austin, within and for the county of Travis, before the Hon. F. G. Morris, and ending on the 4th day of April, A. D. 1896, the following cause came on for trial, to wit:

THE STATE OF TEXAS
vs.
THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Plaintiff's Original Petition.

Filed December 8th, 1895.

THE STATE OF TEXAS, }
County of Travis. }

To the district court of the 53rd judicial district:

Plaintiff, The State of Texas, through her attorney general, C. A. Culberson, acting under direction of the governor, brings this suit against the Houston and Texas Central Railroad Company and says:

1st. The said company is incorporated under the general laws of the State of Texas.

2nd. Its general office and principal place of business is at Houston, Texas.

3rd. Its line of railroad runs into and through the county of Travis, in the State of Texas.

2 4th. Its local agent at Austin, in said county, is H. D. Patrick.

5th. The State of Texas made loans under the provisions of an act entitled "An act to provide for the investment of the special school fund in the bonds of railroads incorporated by the State," approved August 13th, 1856, to the Houston & Texas Central Railway Company, as follows:

On April 13, 1857, one hundred and fifty thousand dollars;
On October 28, 1857, sixty thousand dollars;
On May 31, 1858, sixty thousand dollars;
On July 6, 1858, thirty thousand dollars;
On February 23, 1859, thirty thousand dollars;
On June 15, 1859, thirty thousand dollars;
On July 22, 1859, thirty thousand dollars;
On August 2, 1859, thirty thousand dollars;
On August 20, 1859, thirty thousand dollars;

and said company executed — delivered to the State of Texas, in consideration of said loans, bonds as follows:

One dated March 25, 1857, for one hundred and fifty thousand dollars;

One dated September 23, 1857, for sixty thousand dollars;

One dated January 28, 1858, for thirty thousand dollars;

One dated February 23, 1858, for thirty thousand dollars;

One dated February 23, 1858, for thirty thousand dollars;

One dated January 25, 1859, for thirty thousand dollars;

One dated May 14, 1859, for thirty thousand dollars;

One dated ——, 1859, for thirty thousand dollars;

One dated June 2, 1859, for thirty thousand dollars;

One dated July 29, 1859, for thirty thousand dollars;

said bonds being to the effect that said company would pay to the State of Texas, at the office of its treasurer, in the city of Austin, ten years from the respective dates of said bonds, the said several sums of money; would pay each year two per cent. of said several sums as sinking funds, and would pay interest on each of
3 them at the rate of six per cent. per annum, and said bonds expressly acknowledging the lien created by the act aforesaid to secure payment of loans made thereunder.

By the loans aforesaid and by the execution of said bonds the said company promised and became liable to pay at the dates severally indicated the several sums of money (principal, interest, and sinking fund) mentioned, and the State, to secure payment of said sums, became thereby invested with the lien aforesaid.

6th. That the State of Texas made, under the provisions of the act aforesaid and of an act approved January 28th, 1856, a loan to the Washington County Railroad Company, on June 29th, 1859, of sixty-six thousand dollars, and in consideration thereof the said company executed to the State its bond dated June 6th, 1859, to the effect that it would, ten years after the date thereof, pay to the State, at Austin, Texas, said sum; would pay annually two per cent. thereof as a sinking fund, and would pay interest thereon at the rate of six per cent. per annum, and acknowledging the lien created by the act aforesaid.

By the said loan and the bond aforesaid the said company promised and became liable to pay the said sum at the time indicated and the said sinking fund and interest, and the State became invested with the lien aforesaid.

7th. That on or before the 15th day of August, A. D. 1870, the Washington County railway became consolidated with and merged into the Houston and Texas Central railway and said Houston and Texas Central Railway Company thereafter had possession of and claimed the property which had theretofore belonged to the Washington County Railway Company.

8th. That the bonds aforesaid were not paid according to their tenor and effect and the property upon which the lien aforesaid attached became liable to sale.

9th. That prior to the 15th day of August, 1870, the Houston and Texas Central Railway Company had constructed on its
4 main line railroad as follows: A line of railroad, completely constructed, beginning at the original terminus of said road

on the left bank of Buffalo bayou, in the city of Houston, in Harris county, Texas, and running thence in a general northwesterly direction through the counties of Harris, Waller, Grimes, Brazos, Robertson, Falls, and Limestone, including the 1st, 2nd, 3rd, 4th, 5th, and 6th sections of twenty-five miles each, to a point one hundred and fifty miles *to* the place of beginning, about three miles south of Kosse, in Limestone county.

10th. That prior to the 15th day of August, 1870, the Washington County Railway Company and the Houston and Texas Central Railway Company had constructed of what is now known as the Western branch of the Houston and Texas Central railroad road as follows: A line of railroad beginning at the point of junction of said Western branch with the track of the main line of the Houston and Texas Central railroad in the town of Hempstead, in Waller county, thence in a general westerly direction through Waller and Washington counties for about twenty-one and a quarter miles to a point in the town of Brenham, in Washington county.

11th. That under the terms of the said act of August 13th, 1856, and under the terms of the bonds aforesaid a lien to secure payment of the said bonds attached to all of said road, viz., said one hundred and fifty miles of the main line of the Houston and Texas Central railway and twenty-one and a quarter miles of the Western branch thereof, and to all charter rights of said company, or companies, including the road-bed, right of way, grading, bridges, iron rails, equipment and masonry, and to all stock subscribed for in said company or companies, and upon all depots and depot stations, all the property owned by said company or companies as necessary for their business.

12th. That on the 1st day of May, 1870, the aggregate amount due upon the bonds executed by the Houston and Texas Central Railway Company, principal and interest, was the sum of six hundred and fifty-seven thousand three hundred and twenty-four and $\frac{35}{100}$ths dollars ($657,324.35).

13th. That on the 1st day of May, 1870, the aggregate amount due upon the bonds executed by the Washington County Railway Company, principal and interest, was the sum of one hundred and three thousand eight hundred and forty and $\frac{1}{100}$th dollars ($103,840.01).

14th. That the Houston and Texas Central Railway Company accepted the terms of the act of August 13th, 1870, entitled "An act for the relief of railroad companies indebted to the State for loans from the school fund," and thereby promised and became liable to pay, in addition to said sum of $657,324.35 and said sum of $103.840.01, semi-annually, on the 1st day of November and the 1st day of May of each year, six months' interest at six per cent. per annum on said aggregate amounts, and in addition thereto on said dates a sinking fund of one per cent. of said amounts, in consideration of which promises the State, by the terms of said law, agreed not to make sale of the property upon which its lien existed so long as said payments were made.

15th. That thereafter to May 1st, 1879, said semi-annual interest

and sinking fund was paid by the Houston and Texas Central Railway Company upon said sum of $103,840.01, but that no payment of principal or interest was made on November 1st, 1879, nor within ten days thereafter, nor has any such payment been since made, and upon said failure to pay within ten days after the 1st day of November, A. D. 1879, the entire balance remaining then unpaid of said sum, amounting to $86,655.90, became at once due and payable.

16th. That up to and including the 1st day of May, 1893, the said semi-annual interest and one per cent. sinking fund was paid by said Houston and Texas Central Railway Company and defendant upon said sum of $657,324.35, but the next semi-annual interest and sinking fund was not paid, but the sum of $2,620 only was paid; the balance thereof was not paid, nor has it or any part of it since been paid, and upon said failure to pay within ten days after the 1st day of November, A. D., 1893, the entire balance of
6 $411,935.84 remaining then unpaid of said sum of $657,324.35 became at once due and payable.

17th. That upon said sum of $86,655.90 there has become due each six months from said first day of May, 1879, up to the present time semi-annual interest at the rate of six per cent. per annum, and there is due upon each of said installments of unpaid interest interest from the dates upon which they respectively became due at the rate up to July 1st, 1891, of eight per cent. and since then of six per cent.

18th. That upon said sum of $411,935.84 there has become due upon May 1st, 1894, semi-annual interest at the rate of six per cent. per annum and upon November 1, 1894, a like amount, and since those dates upon said unpaid installments interest at six per cent.

19th. That upon the 1st day of July, A. D. 1886, all the property of the Houston and Texas Central Railway Company, including the property upon which the State has the lien aforesaid, was sold judicially, and the purchaser and his associates formed under the laws of this State the corporation herein styled defendant.

20th. That said Washington County and Houston and Texas Central Railway Companies are defunct; that their corporate existence has been terminated; that neither of them has a president, directors, or other officers or stockholders or other representatives upon whom service may be had, and that there is no way of bringing said defunct corporations before this court.

21st. That The Houston and Texas Central Railroad Company, defendant, claims as the legal owner (subject to the lien heretofore mentioned) and is in possession of all the property upon which the lien above set forth exists.

22nd. Plaintiff prays that judgment be given it that there is due upon the obligations aforesaid the sums of money heretofore stated, with interest as set forth, and that payment thereof is secured by the liens on the property aforesaid; that said property be sold
7 as under execution, and that the proceeds be applied to the payment of said sums, with interest, and of costs, and that it

have such other relief, including the appointment of a receiver, as in the premises should be given.

C. A. CULBERSON,
Attorney General of Texas.

Endorsed: No. 11915. The State of Texas *vs.* The Houston & Texas Central Railroad Co. Plaintiff's original petition. Filed December 8, 1894. Jas. P. Hart, cl'k, by Fred C. Davis, dep.

Defendant's First Amended Original Answer.

Filed May 15th, 1895.

In District Court of Travis County, Texas, Fifty-third Judicial District, at Austin.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Now comes The Houston & Texas Central Railroad Company, defendant in the above styled and numbered cause, by attorney, and by leave of court files this its first amended original answer in lieu of its original answer herein filed on the 7th day of January, 1895, and demurs to plaintiff's petition exhibited against it in this cause and says the same is insufficient in law to require this defendant to answer thereto; and of this defendant prays judgment of the court

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II.

If its demurrer be overruled and if it is required to answer further herein, then the said Houston & Texas Central Railroad Company comes, by attorney, and denies all and singular the allegations in plaintiff's petition contained, except such as may be hereinafter expressly admitted; and of this *he* puts *him*self upon the country.

III.

And for further plea in this behalf said Houston & Texas Central Railroad Company comes, by attorney, and says:

1. That the State of Texas by an act entitled "An act to establish a system of schools," approved January 31st, 1854, set apart and appropriated the sum of two million dollars of the five per cent. bonds of the United States then in the treasury of the State as a school fund for the support and maintenance of public schools, and declared and enacted that said funds should be called the special school fund, and provided that the interest arising therefrom should be apportioned and distributed for the support of schools in the manner and under the regulations in said act prescribed; and, in accordance with said act, defendant says that said bonds were set aside and said special school fund was thereby created and established. Defendant here refers to said act and prays that the same

be read as a part hereof with the same effect as though it were set forth in full herein.

2. That by an act entitled "An act to provide for the investment of the special school fund in the bonds of railroad companies incorporated by the State," approved August 13th, 1856, the State of Texas by law enacted, among other things, that the governor, comptroller, and attorney general should *ex officio* constitute a board of school commissioners, whose duty it should be to draw from the treasury the special school fund created by the aforesaid act, approved January 31st, 1854, entitled "An act to establish a system of schools," and any additions to such fund, and should invest the same as provided in said act; that the aforesaid bonds belonging to such special
9 school fund should be by said board of school commissioners loaned to legally incorporated railroad companies in this State at an interest of six per cent. per annum, and upon other terms and conditions in said act specified; that such loan should be secured by the bonds of such railroad companies, made and executed to the State of Texas in the corporate name of such company, signed by the president and countersigned by the secretary or treasurer under the seal of such company, and that such bonds should constitute a lien upon the road and charter rights of such company, including the road-bed, right of way, and other property in said act more specifically referred to; that, in addition to the annual interest of 6 per cent., from the company accepting any loan under the provisions of said act said company should pay annually, at the expiration of each year from the date of the loan, the further sum of two per cent. upon the amount of the loan into the treasury of the State for the purpose of establishing a sinking fund to be applied towards the payment of the loan at its maturity, and the amounts so paid for the purpose of such sinking fund, with their accumulations, should be credited to such company. Defendant now here refers to said act for further statement of its terms, provisions, and conditions, and asks that the same be read as a part hereof with the same effect as if it were set forth at length herein.

That section 3 of the aforesaid act of August 13th, 1856, was amended by an act entitled "An act to amend the third section of an act entitled 'An act for the investment of the special school fund in bonds of railroad companies incorporated by the State,'" approved August 26th, 1856, the effect of which amendment was to authorize such loan only to railroad companies theretofore chartered by the State of Texas. Defendant now here refers to said amendatory act and asks that, as far as material, the same be read with the same effect as though it were set forth at length herein.

That said act of August 13th, 1856, was further amended by an act entitled "An act to amend the fourth section of an act to pro-
10 vide for the investment of the special school fund in the bonds of railroad companies incorporated by the State, passed August 13th, 1856," approved January 22nd, 1858, the only effect of which amendment was to authorize the loan to companies entitled thereto upon the completion of sections of ten miles of their respective roads instead of sections of five miles, as originally authorized. Defendant

here refers to said amendatory act and asks that the same be read, as far as material, as a part hereof with the same effect as though it were set forth at length herein.

3. That the Houston & Texas Central Railway Company, a railroad corporation duly created and chartered under the laws of the State of Texas prior to August 13th, 1856, for the purpose of building a railroad in the State of Texas, and the Washington County Railroad Company, likewise a railroad corporation duly created and chartered under the laws of the State of Texas prior to August 13th, 1856, for the purpose of building a railroad in the State of Texas and each being entitled thereto under the provisions and conditions of the aforesaid act of August 13th, 1856, applied for in the manner in and by said act provided and obtained from the State of Texas the loan of a portion of the aforesaid special school fund, created, as hereinbefore alleged, by the act entitled "An act to establish a system of schools," approved January 31st, 1854; that the amount of said fund borrowed by the said Houston & Texas Central Railway Company aggregated the sum of four hundred and fifty thousand dollars, which was received by it in some of the bonds of the United States originally set apart under the provisions of the aforesaid act of January 31st, 1854, creating said special school fund, and also in specie upon different dates and in different amounts between the 25th day of March, 1857, and the 20th day of August, 1859, and about the dates and approximating the several amounts specified in plaintiff's original petition herein, but this defendant is not informed whether said Houston & Texas Central Railway Company executed and delivered the bonds described and referred to in plaintiff's
11 said petition as therein alleged, and it demands proof thereof; that the amount of said fund borrowed by the said Washington County Railroad Company aggregated the sum of sixty-six thousand dollars which was received by it in some of the bonds of the United States set apart under the provisions of the aforesaid act of January 31st, 1854, creating said special school fund, and also in specie about the 6th day of June, 1859, as alleged in plaintiff's original petition herein, but this defendant is not informed whether said Washington County Railroad Company executed and delivered the said bond described and referred to in plaintiff's said petition as therein alleged, and it demands proof thereof.

4. That, in accordance with the terms and conditions of the laws hereinbefore referred to, said Houston & Texas Central Railway Company paid in cash to the treasurer of the State of Texas, who was authorized to receive the same upon the dates when the same were due and as hereinafter specified, the several sums of money hereinafter shown, which were received by said treasurer and applied to the payment and satisfaction of the interest then due upon and as a sinking fund to satisfy the principal of the aforesaid loan, to wit:

		Principal.	Interest.
On or about	March, 1858		$7,915.00
" " "	" "		1,240.00
" " "	April 14, 1858	$3,000.00	
" " "	November 4, 1858	1,200.00	
" " "	February 12, 1859		9,000.00
" " "	" " "		3,600.00
" " "	" " "		1,350.00
" " "	" " "		1,350.00
" " "	" " "		1,168.76
" " "	" 28, 1859		25.00
" " "	April 12, 1859	3,000.00	
" " "	May 31, 1859	1,200.00	
" " "	July 5, 1859	600.00	
" " "	November 1, 1859	1,200.00	
" " "	February 23, 1860	600.00	
" " "	March 1, 1860		24,152.45
" " "	April 13, 1860	3,000.00	
" " "	May 31, 1860	1,200.00	
" " "	June 15, 1860	600.00	
" " "	July 10, 1860	600.00	
" " "	August 31, 1860	1,800.00	
Total		$18,000.00	$49,801.21

12 Such payments satisfied and were made to and accepted by the State of Texas as satisfying the amount said Houston & Texas Central Railway Company was then required to pay on account of the principal and interest of said loan, in accordance with the terms and provisions of the aforesaid laws.

5. That, in accordance with the terms and conditions of the laws hereinbefore referred to, said Washington County Railroad Company paid in cash to the treasurer of the State of Texas, who was authorized to receive the same on or about February 28th, 1860, the sum of $2,899.45 on account of interest, and on June 6th, 1860, the sum of $1,320.00 on account of principal then due as a sinking fund upon the aforesaid loan, which sums were received by said treasurer, and applied by him accordingly. Such payments satisfied and were made and accepted by the State of Texas as satisfying the amount said Washington County Railroad Company was then required to pay on account of principal and interest of said loan, in accordance with the terms and provisions of the aforesaid laws.

6. That before the next payment of principal or interest upon said loan became due, either by the said Houston & Texas Central Railway Company or by the Washington County Railroad Company, and early in the year 1861, the civil war between Texas and the other States of the Southern Confederacy and the United States began, and, as a result of the commencement of such war, the business of said railway companies, in common with all other business and enterprises of the State, became paralyzed and said railway companies rendered utterly unable to pay either the in-

terest or sinking fund upon said loans as the same matured; that recognizing this, and in view of the distressing condition of the country at that time, the State of Texas passed an act which was approved January 11, 1862, entitled "An act for the relief of certain railroad companies of the State of Texas," which provided
13 that the payment of all interest and the two per cent. sinking fund due and to become due on the bonds issued by the several railroad companies of the State of Texas for loans from the special school fund should be, and the same was thereby, extended until the first day of January, 1864, or until six months after the termination of the then existing war between the Confederate States and the United States of America, should it terminate before said 1st day of January, 1864; and provided further that said act should in nowise impair the prior lien which the State then held upon any railroad for the payment of the loans and interest then due or to become due by said roads to the State.

7. That on account of the scarcity of money, the disturbance of trade, and the practical suspension of business as a result of the then prevailing war, the State of Texas was unable to collect the taxes necessary to the support of the State government or to meet its outstanding obligations, and had then outstanding its valid obligations in the form and of the character of warrants drawn by its comptroller on the State treasury for claims and demands against the State, but which the treasurer was unable to pay for lack of funds, when, for the purpose of aiding in the maintenance of its credit, on the 16th day of December, 1863, the legislature of Texas passed an act entitled "An act authorizing the comptroller of the State to receive from railroad companies in this State the interest that may now be due on their bonds," which act was approved December 16th, 1863, and was as follows:

"SECTION 1. Be it enacted by the legislature of the State of Texas: That the comptroller of the State be and he is hereby authorized to receive from the railroad companies in this State who are indebted to the special school fund, all interest on their bonds that may now be or hereafter become due, provided the same is tendered in State bonds or in State treasury warrants previous to the meeting of the next regular session of the State legislature.

"SECTION 2. That for all sums so paid in the comptroller
14 and treasurer shall issue to the special school fund the bonds of the State bearing 6 per cent. interest.

"SECTION 3. This act to take effect from its passage."

Under like circumstances and for the same object, the legislature of Texas passed an act entitled "An act amending an act authorizing the comptroller of the State to receive from railroad companies in this State the interest that may now be due or hereafter become due on their bonds," which act was approved May 28th, 1864, and is as follows:

"SECTION 1. Be it enacted by the legislature of the State of Texas: That the provisions of the act of which it is amendatory shall not apply to railroad companies that fail or refuse to receive State bonds

or State treasury warrants at par for freight or passage at the prices of rates established by law.

"SECTION 2. That whenever satisfactory evidence is produced or furnished to the comptroller of the State that any railroad company has failed or refused to receive the State bonds or State treasury warrants at par for freights or passage at the rates established by law he is required to refuse to receive the State bonds or treasury warrants for the interest due by said railroad upon its bond.

"SECTION 3. That the president of any railroad in this State be and is hereby required to post in a conspicuous place in the railroad offices and in the passenger cars the provisions and terms of this act under the penalty of $100 to be recovered for the benefit of the State by suit before any court of competent jurisdiction upon information of any party.

"SECTION 4. That all laws or parts of laws conflicting with this act be and the same are hereby repealed and that this act take effect from and after its passage."

Under similar circumstances attending the passage of each
15 of the two acts just above recited, and for the same purpose, the legislature of the State of Texas passed an act entitled "An act to authorize railroad companies to discharge their indebtedness to the special school fund with the treasury warrants and bonds and coupons of the State;" which act was approved and became a law November 16th, 1864, and is as follows:

"Be it enacted by the legislature of the State of Texas: That the railroad companies of this State that are indebted to the special school fund shall continue to be allowed the privilege of paying the interest due said fund in the treasury warrants and bonds and coupons of the State; and may also discharge the whole or any part of the principal of their indebtedness to that fund (in the same manner) provided such railroad companies shall satisfy the comptroller that the treasury warrants and bonds and coupons of the State are received by them at par with specie for freight and passenger travel.

That all treasury warrants and bonds and coupons of the State, so received into the State treasury, shall be cancelled; and the comptroller shall issue the bonds of the State, bearing six per cent. interest to the special school fund for the amount so paid in; and this act take effect from its passage."

8. This defendant says that upon the passage of the above-recited act approved December 16th, 1863, and in reliance upon the agreement and obligation of the State evidenced thereby and upon the pledge of the State thereby given to receive its bonds and treasury warrants from them and other railroad companies then indebted to the special school fund in payment of all interest on their bonds then or thereafter to become due, under the conditions in said act specified, the said Houston & Texas Central Railway Company and the said Washington County Railroad Company acquired for valuable and adequate considerations the so-called treasury warrants of the State of Texas referred to and specified in said act, intending to

pay and tender to the comptroller of the State of Texas in
16 payment of the interest on their indebtedness to the State of Texas, on account of said special school fund loan, within the time and upon the conditions specified in said act, and did tender and pay the same to said comptroller upon the dates hereinafter specified; and upon the passage of the above-recited acts approved May 28th, 1864, and November 15th, 1864, and in reliance upon the agreement and obligation of the State evidenced thereby, and upon the pledge of the State thereby given to receive its bonds and treasury warrants from them and other railroad companies then indebted to the special school fund in payment of all interest on their bonds then or thereafter to become due, as provided by the aforesaid act of May 28th, 1864, and upon the principal of said indebtedness as well, as provided by the aforesaid act of November 15th, 1864, and under the conditions in said act specified, the Houston & Texas Central Railway Company and the Washington County Railroad Company each received said bonds and State treasury warrants at par for freights and passage at the rates then established by the law, and the presidents of each of said companies posted in a conspicuous place in the railroad office and in the passenger cars of said companies the provisions and terms of the aforesaid act of May 28th, 1864, and satisfied the comptroller of the State that such treasury warrants and bonds and coupons of the State were so received by them at par with specie for freight and passenger travel, the sole inducement and consideration prompting said railroad companies to receive such treasury warrants at par for freight and passenger fares on their said railroads being the promise and agreement of the State of Texas evidenced by the aforesaid laws to receive the same in payment of the interest and principal of the aforesaid indebtedness of said companies to the State.

9. That having acquired the same for a valuable consideration, as hereinbefore recited, and having received the same, together with
17 the bonds and coupons of the State at par in payment for freight and passenger fares of their respective railroads, the said Houston & Texas Central Railway Company, as it was authorized to do by the above-recited acts, tendered, delivered, and paid to the comptroller of the State of Texas in payment of interest then due on its aforesaid indebtedness to the State of Texas the following sums in the treasury warrants of the State of Texas, upon the dates specified, to wit:

On January 20th, 1864,	the sum of	.....	$23,466.76
" March 30, 1864,	"	.....	6,670.00
" April 19, 1864,	"	.....	15,009.92
" " "	"	.....	4,000.00
" July 13, 1864,	"	.....	31,660.69
" August 20, 1864,	"	.....	2,000.00
" " 24, 1864,	"	.....	22,966.98
Making a total of		.....	$105,774.35

And the Washington County Railroad Company, as it was authorized to do by the above-recited acts, tendered, delivered, and paid to the comptroller of the State of Texas, in payment of interest then due on its aforesaid indebtedness to the State of Texas, in the treasury warrants of the State of Texas, the sum $12,755.41 on the 11th day of July, 1864, and the sum of $2,790.99 on the 25th day of August, 1864, and the sum of $3,880.80 on the 11th day of May, 1865, making a total of $19,427.20, and on the principal of its aforesaid indebtedness to the State of Texas the sum of $27,663.00 on the 11th day of May, 1865, each of which sums so tendered, paid, and delivered in such treasury warrants by the Houston & Texas Central Railway Company and by the Washington County Railroad Company respectively, as aforesaid, were received and accepted by the comptroller and treasurer of the State of Texas, as they were authorized and required by the above-recited acts to do, and credit therefor was then and there duly given to said Houston & Texas Central Railway Company and to the said Washington County Railroad Company respectively by the said comptroller and treasurer upon the books of their respective departments.

18 That upon the payment of the treasury warrants by said railway companies and receipt thereof by the comptroller and treasurer, as aforesaid, the said warrants were cancelled, as authorized and required by the above-recited acts, and thereupon the comptroller and treasurer, as required by the above-recited acts, issued the bonds of the State, bearing 6 per cent. interest, to the special school fund for the amounts so paid by said railway companies in such treasury warrants.

10. This defendant further says that by the passage of the above-recited acts, entitled respectively "An act authorizing the comptroller of the State to receive from the railroad companies in this State the interest that *they* may now be due on their bonds," approved December 16th, 1863, and "An act amending an act authorizing the comptroller of the State to receive from railroad companies in this State the interest that *they* may now be due or hereafter become due on their bonds," approved May 28th, 1864, and "An act to authorize railroad companies to discharge their indebtedness to the special school fund with the treasury warrants and bonds and coupons of the State," approved November 16th, 1864, for the purpose of paying its current expenses and to induce them to acquire such treasury warrants for a valuable consideration and in lieu of money for freight and passenger fares, thereby aiding in maintaining its credit, the State of Texas contracted and agreed with the said Houston & Texas Central Railway Company and with the Washington County Railroad Company respectively to accept and receive from them upon the terms and conditions in said acts specified and on said account the treasury warrants of said State paid to the the comptroller and treasurer of the State by said railroad companies on account of the principal and interest due upon said school-fund loan, as hereinbefore alleged, and upon the acceptance of the terms and conditions of said acts by each of said railroad companies by acquiring for a valuable consideration and by receiving the State

bonds and the State treasury warrants at par with specie for
19 freight and passenger fares at the rate established by law and
by satisfying the comptroller of the State that they had done so, as hereinbefore alleged, said acts immediately became and there was created a valid and binding contract by and between the State of Texas and each of said railway companies, inuring to the benefit of this defendant, that the State of Texas would receive, as it did receive, from each of said railway companies the treasury warrants of said State paid to it by each of said railway companies, as hereinbefore alleged, on account of the interest and principal due by them respectively upon said school fund loan, and would give, as it did at the time give, to each of said railway companies credit for the amount so paid in such warrants by them respectively upon principal and interest due upon said loan, as hereinbefore alleged, which contract, this defendant says, was within and in all respects is entitled to the protection of article I, section X, of the Constitution of the United States, to the effect that no State shall pass any law impairing the obligation of contracts.

11. This defendant further says that the said treasury warrants paid by said railway companies, as hereinbefore alleged, on account of the principal and interest due by them respectively on their said indebtedness to the State of Texas for said school fund loan were made by them in good faith and accepted by the said State through its duly authorized officers without objection as valid and lawful payments, and for which said railway companies were entitled and for which they were given credit upon the books of the State of Texas, in pursuance of valid laws passed by said State in the exercise of its sovereign power and as then actually in force and observed in Texas, to which said railway companies and all persons residing or being within its territory were subject, and according to the laws of said State as then existing and expounded by the courts in all departments of the State government and as enforced
by it and as then actually in force and observed in Texas
20 each of such payments in such treasury warrants were, when made, lawful and valid, and were made by said railway companies and willingly accepted by the State of Texas as lawful and valid and without any objection or question, and when such treasury warrants were acquired and received by said railroad companies, as hereinbefore alleged, and by them paid to and received by the State of Texas without objection as just and lawful payments upon said indebtedness of said railway companies to said State and credit therefor was duly given by the State to said railroad companies the transaction with respect to such payments became fully executed and the State of Texas could not lawfully thereafter, as it never should in good conscience, dispute or question the validity of such payments and the right of said railway companies to the credit therefor then given by the State of Texas and to which said railway companies were lawfully and justly entitled.

And this defendant further says that the State of Texas, by denying the said Houston & Texas Central Railway Company and the said Washington County Railroad Company credit for the amounts

paid by each of them respectively, as hereinbefore alleged, in treasury warrants of the State of Texas on account of their said indebtedness and by recharging said companies with the amount so paid by them respectively in treasury warrants and cancelling the credit theretofore given by it to them for such payments and by thus seeking to deprive this defendant of the benefit of all such payments and by seeking to subject the property of this defendant to the payment of such demand after it has once been paid and satisfied, seeks to deprive this defendant of its property without due process of law, and denies to this defendant the equal protection of the laws, contrary to article XIV of the amendments to the Constitution of the United States.

And this defendant says, furthermore, that the State of Texas has since said demands were made and since the close of said
21 civil war fully recognized and ratified the validity of such payments; that it has paid in full the bonds issued by the comptroller and treasurer to the special school fund for and in lieu of said payments made by said railway companies to and received by the State in the treasury warrants, as hereinbefore alleged, and the said school fund has been thereby fully reimbursed for such payments so made in said warrants.

12. That by an act of the legislature of the State of Texas entitled "An act regulating the collection of debts," approved November 10, 1886, it was enacted, among other things, that all railroad companies then owing interest upon their bonds for loan of the special school fund should have an extension of time for the payment of the interest then due as follows: The entire amount of interest then due should be divided into eight equal parts and paid as follows in specie: One equal part to be paid on or before the first day of January, 1867, and one equal eighth part every six months thereafter until the entire amount should be paid.

13. That after the close of said civil war, in 1865, and before the first day of May, 1870, the Houston & Texas Central Railway Company paid and the State of Texas received in lawful money of the United States on account of interest due by it to the State of Texas on its aforesaid indebtedness for said school fund loan the following:

On December 31, 1866,	the	sum	of	$2,855.00
On January 1, 1867,	"	"	"	3,375.00
On April 23, 1867,	"	"	"	10,830.00
On May 4, 1867,	"	"	"	10,500.00
On May 24, 1867,	"	"	"	4,500.00
On December 31, 1867,	"	"	"	6,230.00

And the Washington County Railroad Company, on account of interest due by it on its said indebtedness to the State of
22 Texas, paid to and the State of Texas accepted in lawful money of the United States, on January 1st, 1867, the sum of $317.98, each and all of which payments made as aforesaid were received and accepted by the State of Texas as and on the accounts made as aforesaid, and credit therefor was duly given by said State to said railway companies.

14. That by an act of the legislature of the State of Texas entitled "An act for the relief of railroad companies indebted to the State for loans from the special school fund," approved August 13, 1870, it was, among other things, enacted that any railroad company then indebted to the State for loans from the special school fund might avoid the sale of its railroad for the non-payment of principal or interest by the payment into the treasury of the State on the first day of November, 1870, of six months' interest on the aggregate amount due on account of said loans, principal and interest, as said aggregate amount stood on the first day of May, 1870, and by the payment, in addition, on said first day of November of one per cent. upon said aggregate amount, to be applied towards the sinking fund provided for by then existing laws in respect to said loans, and by continuing to pay into the treasury of the State six months' interest and one per cent. on account of said sinking fund semi-annually thereafter on the first day of May and November in each year, and also that the State of Texas would not exact of any railroad company not thereafter in default in respect to any of the payments required in said act the payment of the principal of the debt of said company, except said payment on account of the sinking fund, as aforesaid, but that any company might pay the same in full at any time on thirty days' notice to the governor, and that the lien or mortgage in favor of the State securing such debt should not attach to any extension of its existing road thereafter constructed by any of said companies.

15. That on the 15 day of August, 1870, the legislature
23 of the State of Texas passed, notwithstanding the veto thereof by the governor, in the manner and by the number of votes required by the constitution in order that the same should become a law, an act entitled "An act for the relief of the Houston & Texas Central Railway Company," whereby, among other things, it was enacted that the Washington County Railroad Company should thereby be made and declared to be to all intents and purposes in law a part of the Houston & Texas Central Railway Company, and should be under the control and management of the Houston & Texas Central Railway Company in like manner as every other part of said railway, and said Houston & Texas Central Railway Company should have the right to complete and extend that part of its railway theretofore known as the Washington County railroad from Brenham to the city of Austin, and should have and enjoy all the rights, privileges, grants, and benefits that were then or should at any time thereafter be secured to any railroad company in the State of Texas by any general law, etc.; and it was also by said act provided that for the whole amount of principal and interest due to the State by the Houston & Texas Central Railway Company and the Washington County Railroad Company on the 1st day of July, 1870, the governor of the State should accept and receive from the Houston & Texas Central Railway Company the 7 per cent. land-grant, sinking-fund, first-mortgage, gold, interest-bearing bonds of said company issued or to be issued by virtue of a deed of trust executed by said company July 1,

1866, and maturing on July 1st, 1891, and — which deed of trust Shephard Knapp and David S. Dodge, of New York, were named and accepted as trustees, and provided, further, that the governor should, after making the exchange of bonds in said act provided for, cancel and deliver to said railway company the six per cent. bonds of the Houston & Texas Central Railway Company and of the Washigton County Railroad Company then held by the State for sums borrowed from the school fund (being the same bonds now sued on by the State herein), and providing also that the settlement and exchange of bonds therein provided for should be made
24 at any time agreed upon by the governor and said railway company prior to the first day of December, 1870, and also that in making the settlement therein provided for the Houston & Texas Central Railway Company should be allowed a credit for the sums paid in the treasury warrants of the State during the years 1864 and 1865 by said company and by the Washington County Railroad Company upon the accounts of which said sums were respectively paid by said companies, and that said sums amounted in the aggregate to $152,864.55.

And this defendant says that the 7 per cent. bonds which said act required the governor to receive from said Houston & Texas Central Railway Company in exchange for the bonds of said railway company and of the Washington County Railroad Company then held by the State for sums borrowed from the school fund were duly and properly tendered by said railway company to the governor, as it was authorized to do by the said act prior to the first day of December, 1870, but the then governor, E. J. Davis, refused to accept said bonds so tendered and refused to surrender and deliver or permit to be surrendered and delivered to said Houston & Texas Central Railway Company, as it was his duty to do under the aforesaid act, the bonds of said Houston & Texas Central Railway Company and of the Washington County Railroad Company then held by the State for sums borrowed by them from the said special school fund, and said governor wilfully and wrongfully refused to perform the duties enjoined upon and required of him by the aforesaid act.

But this defendant says, nevertheless, that said act entitled "An act for the relief of the Houston & Texas Central Railway Company" became and was a valid law of the State of Texas, and that thereby the State of Texas expressly recognized and acknowledged the validity of the payments theretofore made by said Houston & Texas Central Railway Company and said Washington County Railroad Company in treasury warrants of the State of Texas, as hereinbefore alleged, on account of their respective indebtedness for said school fund loan.

25 16. This defendant further says that the aggregate amount due by said Houston & Texas Central Railway Company on account of said loan, principal and interest, as said aggregate amount stood on the 1st day of May, 1870, and as said aggregate amount stood upon the books of the State of Texas after crediting said railway company, as was done on said books, with the amounts paid,

as aforesaid, in State treasury warrants, was $551,550, being $432,000, principal, and $119,550, interest, instead of $657,324.35, as charged in plaintiff's petition herein. And the aggregate amount due by said Washington County Railroad Company on account of said loan, principal and interest, as said aggregate amount stood on the first day of May, 1870, and as said aggregate amount stood upon the books of the State of Texas after crediting said railroad company as was done on said books with the amounts paid as aforesaid in State treasury warrants, was only $48,497.17, and not the sum of $103,840.01, as alleged in plaintiff's petition herein.

17. This defendant further says that after the first day of May, 1870, and after the passage of the aforesaid acts of August 13th and 15th, 1870, and on, to wit, about the first day of November, 1870, A. Bledsoe, comptroller, with the concurrence and approval of E. J. Davis, the then governor of the State of Texas, wrongfully and unlawfully sought to deprive the said railway companies of the credit to which they were entitled for the payments made by them as hereinbefore alleged on their said indebtedness in treasury warrants of the State, and wrongfully sought to repudiate such payments; and, in pursuance of such wrongful and unlawful purpose, said A. Bledsoe, as such comptroller, wrongfully and without any authority of law sought to recharge each of said railway companies, respectively, upon the books of the comptroller's office with the several amounts paid by them, respectively, in treasury warrants, as hereinbefore alleged, thereby falsely stating the amount of said indebtedness due by said Houston & Texas Central Railway Company on May 1st,
26 1870, at $657,324.35 instead of $551,550, which last-named sum was the true aggregate amount as it stood on the first day of May, 1870, and falsely stating the amount of said indebtedness due by the Washington County Railroad Company on May 1st, 1870, at $103,840.01 instead of $49,800, which latter sum was the true aggregate amount of said indebtedness as it stood on the first day of May, 1870; and thereupon said E. J. Davis, as such governor, wrongfully and without lawful authority, demanded that said Houston & Texas Central Railway Company should pay on the 1st day of November, 1870, six months' interest and one per cent. as a sinking fund on $657,324.35 instead of on only $551,550, which latter sum was the aggregate amount of its indebtedness as said aggregate amount stood on the first day of May, 1870, and that the Washington County Railroad Company should pay six months' interest and one per cent. as a sinking fund on $103,840.01 instead of on only $49,800, which latter was the aggregate amount of its indebtedness as said aggregate amount stood on the first day of May, 1870, and that they should continue to pay into the treasury of the State six months' interest and one per cent. on account of said sinking fund semi-annually thereafter on the first day of May and November in each year, and upon the refusal of said railway companies to comply with said wrongful and unlawful demands of said comptroller and governor, the said E. J. Davis, as governor, threatened to proceed and was in fact proceeding to advertise and sell, in the manner provided

in the aforesaid act of August 13th, 1856, and of August 13th, 1870, all the railroad property and franchises of each of the said railway companies on which a lien had been created to secure the payment of the aforesaid loans to them; and the said governor being, by the aforesaid act, apparently clothed with the power to make such sale, and thereby irreparably injure each of said companies by casting a cloud upon the title to their property, and probably by having the same taken from them by force, and being without adequate relief against such uniust action of the State of Texas, through its said gov-
27 ernor, said railway companies were forced to yield and compelled to submit to his unjust and unlawful demands as aforesaid, and to pay the amount then demanded by him. Such unjust and unlawful demand, accompanied with like threats, coercion, and duress, was repeated by said governor and by his successors on or about the first day of May and November in each year during the times hereinafter alleged, and said Houston & Texas Central Railway Company, in obedience to such unjust and unlawful demands, threats, and coercion, has been forced and compelled by the State of Texas to pay a two per cent. per annum sinking fund and six per cent. interest upon a computed aggregate amount wrongfully claimed as aforesaid by the State of Texas to be due by the Houston & Texas Central Railway Company on the first day of May, 1870, of $657,324.35, instead of $551,550, the true amount, and a two per cent. per annum sinking fund and a six per cent. per annum interest on a computed aggregate amount claimed by the State of Texas to be due by the Washington County Railroad Company of $103,840.01 instead of $49,800, the just and true amount, and said railway companies each protested throughout and at the time of each payment filed its written protest with the proper officers of the State of Texas against the unlawful demand and exactions aforesaid, and submitted thereto only because the governors of said State threatened and declared their purpose to sell the property of said railway companies to satisfy the lien claimed to secure the indebtedness of said companies to the State of Texas and to seize and take from said railway companies their said railroads and property, and this defendant says that such threat and purpose would have been carried into effect by said State had not said railway companies submitted to such unjust and unlawful demands.

18. This defendant further says that in obedience to the unjust, unauthorized, and unlawful demand of the State of Texas, as hereinbefore alleged, said Houston & Texas Central Railway Company was compelled to pay on account of the aforesaid indebted-
28 ness, and did under protest, as hereinbefore alleged, pay to the State of Texas the several sums of money on or about the several dates specified in the statement attached hereto, marked "Exhibit A," and which this defendant asks to be taken as a part hereof with the same effect as though set forth at length herein, which payments were the 6 per cent. interest and 2 per cent. per annum sinking fund upon a computed aggregate amount due as of May 1st, 1870, of $657,324.35 instead of $551,550, the true amount of the indebtedness of said railway company to the State of Texas

on the first day of May, 1870; and this defendant now here pleads each of such payments so shown and avers that they are in full satisfaction and discharge of any and all indebtedness of the Houston & Texas Central Railway Company or of this defendant on account of said school fund loan and on account of the demand asserted by plaintiff's petition herein, and neither said Houston & Texas Central Railway Company nor this defendant is indebted or liable to the State of Texas, nor is the railroad or other property of this defendant in any way bound or charged with any lien or liability to the State of Texas for or on account of such loan.

19. This defendant further says that in obedience to the unjust, unauthorized, and unlawful demand of the State of Texas, as hereinbefore alleged, said Washington County Railroad Company or the Houston & Texas Central Railway Company, with which it was consolidated, was compelled to pay, on account of the aforesaid indebtedness, and did, under protest, as hereinbefore alleged, pay to the State of Texas the several sums of money on or about the several dates specified in the statement attached hereto and marked "Exhibit B," and which this defendant asks to be taken as a part hereof with the same effect as though set forth at length herein, which payments were 6 per cent. interest and two per cent. per annum as a sinking fund upon a computed aggregate amount due as of May 1st, 1870, of $103,840.01 instead of $49,800, the true
29 amount of the indebtedness of said railway company to the State of Texas on the first day of May, 1870; and this defendant now here pleads each of such payments so shown, and avers that they are more than sufficient to fully pay off and satisfy and are $5,231.65 in excess of any amount which the State of Texas had any right to demand or exact on account of said loan or debt and on account of said school fund loan and on account of the demand asserted by plaintiff's petition herein, and neither said Washington County Railroad Company nor said Houston & Texas Central Railway Company, with which it was consolidated, as hereinbefore alleged, nor this defendant is indebted or liable to the State of Texas, nor is the railroad or other property of this defendant in any way bound or charged with any lien or liability to the State of Texas for or on account of said loan.

20. That as and when each of such payments were made by said railway companies, as hereinbefore alleged and as shown by said Exhibits A & B, the same should have applied, by reason of the facts hereinbefore alleged, to the payment of the 6 per cent. interest and a sinking fund on an aggregate indebtedness of the Houston & Texas Central Railway Company on account of said loan, as such aggregate indebtedness stood on May 1st, 1870, of $551,550 and no more, and to the payment of 6 per cent. interest and a sinking fund on an aggregate indebtedness of the Washington County Railroad Company on account of said loan as such aggregate indebtedness stood on May 1st, 1870, of $49,800 and no more, and this defendant is entitled to have said payments (if they have not been already) so applied, and by such equitable application this defendant says that the indebtedness of the Washington County Railroad Company

to the State of Texas was more than discharged, as shown by Exhibit B hereto attached, by the payment therein shown to have been made on the 1st day of May, 1870, and the indebtedness of the Houston & Texas Central Railway Company on account of
30 said loan was more than discharged by the payment shown in exhibit to have been made on Nov. 9th, 1893.

21. This defendant further says that the road-bed, track, franchise, and charter rights and other property of the said Washington County Railroad Company and of the Houston & Texas Central Railway Company, which prior thereto had acquired by purchase or consolidation said Washington County railroad described in plaintiff's petition and on which plaintiff claims a lien in said petition, were sold under certain decrees of foreclosure and orders of sale rendered by the circuit court of the United States in and for the eastern district of Texas and purchased by F. P. Olcott on or about the 8th day of September, 1888, who thereafter, as authorized by the laws of the State, organized this defendant under the general laws of Texas, and conveyed to it all said property and rights, and by such sale and purchase this defendant acquired and now owns all lines of railway described in plaintiff's petition and on which it claims and seeks to foreclose a lien herein, together with the corporate rights, franchises, and privileges of said Houston & Texas Central Railway Company and of said Washington County Railroad Company, and possesses, operates, and maintains such lines of railway, with the extensions thereof and additions thereto since made, and is entitled to exercise and enjoy such corporate rights, franchises, privileges, and immunities.

22. This defendant says that by reason of all the facts hereinbefore alleged, the payment of such treasury warrants by said railway companies in accordance with the valid laws of the State then existing and actually in force in the State of Texas and as recognized and enforced by all departments of the State; the acceptance of such warrants willingly and without objection by the State and the giving of credit therefor at the time by the State upon its books; the enjoyment of all the benefit of such payments
31 by the State as fully as if the same had been made in lawful money of the United States; the extinguishment of the valid and just indebtedness of the State represented by said warrants by the cancellation of the same when received as such payments, and the full acquiescence and concurrence of the State at the time and for a long time thereafter in all the facts and circumstances attending such payments, as hereinbefore alleged, represent completed and executed transactions with respect to such payments which this defendant says that the State of Texas cannot now lawfully and should not in good conscience attempt to repudiate. The State of Texas, by denying credit for the amounts paid by said railway companies, as hereinbefore alleged, in treasury warrants and by recharging said companies with the amounts so paid by them respectively, and cancelling the credit theretofore given by it to them for such payments, and by thus seeking to deprive this defendant of the benefit of all such payments, and by seeking to

subject the property of this defendant to the payment of such demands after it has once been paid and satisfied, seeks to deprive this defendant of its property without due process of law, and denies to this defendant the equal protection of the laws, contrary to article XIV of the amendments to the Constitution of the United States.

23. This defendant further says that by the passage of the acts hereinbefore referred to, and especially by the passage of the acts entitled "An act authorizing the comptroller of the State to receive from the railroad companies in this State the interest that may now be due on their bonds," approved December 16th, 1863, and an act entitled "An act amending an act authorizing the comptroller of the State to receive from railroad companies in this State the interest that *they* may now be due or hereafter become due on their bonds," approved May 28th, 1864, and an act entitled "An act authorizing railroad companies to discharge their indebtedness to the special school fund with the
32 treasury warrants and bonds and coupons of the State," approved November 16th, 1864, and an act entitled "An act for the relief of railroad companies indebted to the State for loans from the special school fund," approved August 13th, 1870, and an act entitled "An act for the relief of the Houston & Texas Central Railway Company," passed August 15th, 1870, and by the acceptance of the provisions of said act by said Houston & Texas Central Railway Company and by said Washington County Railroad Company, and especially by accepting the treasury warrants of the State in payment of freight and passenger fares on their respective railroads at par with specie, as required by the aforesaid acts of May 28th, 1864, and November 15, 1864, there was created a valid and binding contract by and between the State of Texas, inuring to the benefit of this defendant, as the successor of said companies, and the present owner of the property against which the plaintiff seeks to enforce a lien herein, whereby the State of Texas, for the valuable consideration apparent from the transaction, agreed and bound itself to receive as it did receive from each of said railway companies the treasury warrants of said State, and which were paid to it by each of said railway companies, as hereinbefore alleged, on account of interest and principal due by them respectively upon said school fund loan, and that it would, as it did at the time, give to each of said railway companies credit for each of the amounts so paid by them, which contract, this defendant says, was within and in all respects is entitled to the protection of article I, section X, of the Constitution of the United States, to the effect that no State shall pass any law impairing the obligation of contracts, and which contract, this defendant says, was, when made, valid and binding by the laws of the State of Texas as then existing and actually in force in Texas and as expounded by all and the highest authorities of the State government whose duty it was to administer them, and this defendant says that any constitutional provision, ordi-
-ance, resolution, or legislative enactment, if any there be, which
33 directly or indirectly seeks or is intended to deprive this defendant of the benefit of such payments and credits, or seeks or

is intended to authorize the State of Texas or any of its officers to violate or impair said acts or contracts, or abridge or impair any of the rights of this defendant accruing thereunder, or to recharge it with any of the payments, as hereinbefore shown, or any action of its officers or agents in any manner whatsoever in construction of such legislative enactments, or any decision by the courts of said State to the effect that this defendant is not or shall not be entitled to credit for the payments on account of said indebtedness made in treasury warrants of said State, as hereinbefore alleged, this defendant says are illegal, unauthorized, and void, and have the effect, or are intended by the State of Texas to have the effect, of impairing the aforesaid contract or contracts, and are therefore violative of and contrary to article I, section X, of the Constitution of the United States, providing in effect that no State shall pass any law impairing the obligation of contracts.

IV.

Wherefore this defendant prays judgment and that it be permitted to go hence without day and recover all costs by it in this behalf expended, and it also prays for any and all relief which it may be entitled to in law or equity; and, as in duty bound, will ever pray.

BAKER, BOTTS, BAKER & LOVETT,
Attorneys for Houston & Texas Central Railroad Company, Defendant.

J. P. BLAIR, *Of Counsel.*

EXHIBIT "A."

Oct. 26, 1870		$26,292.97	
May 1, 1871		26,030.04	
	November 3, 1871	25,769.71	
34	May 7, 1872	25,512.04	
	Nov. 9, 1872	25,256.91	27,530.04 cy.
May 8, 1873		25,004.36	
Nov. 7, 1873		24,754.32	
May 7, 1874		24,506.76	
Nov. 6, 1874		24,261.70	
May 7, 1875		24,019.08	
Nov. 9, 1875		23,778.89	
May 5, 1876		23,541.09	
Nov. 6, 1876		23,305.69	
May 10, 1877		23,072.62	
Nov. 10, 1877		22,841.91	
May 10, 1878		22,613.49	
Nov. 9, 1878		22,389.36	
May 10, 1879		22,163.48	
Nov. 10, 1879		21,941.84	
May 14, 1880		21,722.42	
Nov. 9, 1880		21,505.20	
May 9, 1881		21,290.14	

Nov. 10, 1881	21,077.25	
May 8, 1882	20,866.48	
Nov. 7, 1882	20,657.81	
May 8, 1883	20,451.23	
Nov. 9, 1883	20,246.72	
Nov. 9, 1884	20,044.29	
Nov. 8, 1884	19,843.31	
May 9, 1885	19,645.37	
Nov. 9, 1885	19,448.92	
May 8, 1886	19,254.43	
Nov. 9, 1886	19,061.89	
May 7, 1887	18,871.27	
Nov. 9, 1887	18,682.56	
35 May 9, 1888	18,495.73	
Nov. 8, 1888	18,310.73	
May 8, 1889	18,130.37	
Nov. 9, 1889	17,943.68	
May 9, 1890	17,766.92	
Nov. 8, 1890	17,589.25	
May 8, 1891	17,413.36	
Nov. 9, 1891	17,239.23	
May 9, 1892	17,066.84	
Nov. 7, 1892	16,896.17	
May 8, 1893	16,727.20	
Nov. 9, 1893	2,062.68	
	$975,356.21	

EXHIBIT "B."

Nov. 1, 1870	4,142.56	
May 1, 1871	4,123.22	
Nov. 1, 1871	4,070.93	
May 1, 1872	4,030.22	
Nov. 1, 1872	3,991.96	4,349.02 cy.
May 1, 1873	3,950.03	
Nov. 1, 1873	3,910.53	
May 1, 1874	3,871.41	
Nov. 1, 1874	3,832.71	
May 1, 1875	3,794 38	
Nov. 1, 1875	3,756.43	
May 1, 1876	3,718.87	
Nov. 1, 1876	3,681.69	
May 1, 1877	3,644.86	
Nov. 1, 1877	3,608.42	
May 1, 1878	3,572.33	
Nov. 1, 1878	3,536.61	
36 May 1, 1879	3,501.24	
Making a total of	$68,738.30	

(Endorsed:) No. 11915. The State of Texas *vs.* H. & T. C. R. R. Company. Defendant's first amended original answer. Filed May 15, 1895. Jas. P. Hart, cl'k D. C., T. Co., Tex., by E. Huppertz, deputy.

Pl'ff's 1st Supplemental Petition.

Filed November 16th, 1895.

In the District Court of Travis County, Texas, 53rd Judicial District.

THE STATE OF TEXAS
vs.
THE HOUSTON & TEXAS CENTRAL RAILWAY COMPANY.

To the honorable district court of said district and State:

Now comes the plaintiff, The State of Texas, by M. M. Crane, its attorney general, and with leave of the court files this its first supplemental petition, in reply to defendant's first amended original answer filed herein, and for supplement says:

1. That the several counts in said defendant's first amended original answer are entirely insufficient in law and in equity, and that no defense to said action is pleaded in either of said counts; and of this it prays the judgment of the court.

M. M. CRANE,
Att'y General, Att'y for Pl'ff, The State of Texas.

And, specially excepting to defendant's first amended original answer, plaintiff says:

I. That all of paragraph 7 of defendant's first amended original answer is insufficient in this:

37 (1.) That it sets out and pleads three several acts of the legislature of the State as authority for the payment of the debts made the basis of this suit in treasury warrants, State bonds, and Confederate notes; which said acts were passed without constitutional authority and were null and void in this, that they specifically attempted to authorize the destruction and diversion of a special fund given to the State of Texas by the Federal Congress for special purposes and by previous act of the legislature set apart as the special school fund, and that the said public schools of Texas had a vested right in said fund, and that the legislature had no subsequent authority to destroy said fund.

(2.) Because, plaintiff says, said paragraph 7 of defendant's first amended original answer is insufficient in this, that said acts of the legislature therein pleaded, together with others passed at and about the same time and during the continuance of the war between the States, commonly denominated "the Rebellion," plainly show that the treasury warrants and other obligations in which it is alleged that the railroad companies were authorized to pay and in which they did pay a portion of the debts made the basis of this suit were utterly null and void for the following reasons: First, because said treasury warrants in which said payments were authorized to be made and were made were issued for the purpose of being circu-

lated as money, and were therefore utterly null and void because contrary to the provisions of the State constitution which prohibited such use of treasury notes; second, because said warrants were bills of credit emitted by the State, and therefore violative of section 10, article 1, of the Constitution of the United States; third, because the several acts plainly indicate that said treasury warrants and other obligations in which said payments were authorized to be made and were made were issued in aid of the rebellion against the Government of the United States of America, and were therefore void.

38 II. Plaintiff specially excepts to paragraph 8 of said first amended original answer for the same reasons stated in support of the preceding exception.

III. Plaintiff specially excepts to paragraph 9 of said first amended original answer and all other portions of said answer in which defendant sets up payment made in treasury warrants, for the reason that same does not state the dates and denominations of the several warrants nor for what purpose they were issued and in which said payments are alleged to have been made—that is to say, the dates of the notes, when same were issued, the amount of each, and the purpose for which they were issued, so as to enable the court to determine whether the same were valid obligations of the State of Texas or whether the same were void.

IV. Plaintiff specially excepts to paragraph 9 and all other portions of said answer in which it is alleged that the railroad companies paid to the State any part of the debt made the basis of this suit in treasury warrants, because said treasury warrants were void for the reasons stated in first special exception, and because the treasurer and comptroller and the other officers of the State government had no authority to receive payment of the special school debt in anything except lawful money of the United States of America.

V. Plaintiff specially excepts to said answer because it contains no allegation that the railroad companies complied with the terms of the statute which pretendedly authorized the officers of the State to receive said treasury warrants in payment of its debt, in that it does not allege that the warrants so paid to the State or any part thereof or any other warrants of like character were by them received in payment of freight and passenger fares, as said acts of the legislature contemplated.

VI. Plaintiff specially excepts to that portion of said answer which undertakes to allege payment of the several sums of
39 money as interest under duress, because said portions of said answer, in connection with the remainder thereof, show that said payments now claimed to be a credit on the principal were made in satisfaction of the interest then due and demanded by the State and not in payment of the principal or any part thereof, and that said payments were voluntarily made and not made under duress.

M. M. CRANE,
Att'y Gen'l, Att'y for Pl'ff, The State of Texas.

And, answering further, plaintiff denies all and singular the allegations contained in defendant's answer aforesaid, and demands strict proof of the same.

M. M. CRANE,
Att'y Gen'l, Att'y for Pl'ff, The State of Texas.

And, for special replication to the allegations made in defendant's said first amended original answer, plaintiff says that if any payments were made in treasury warrants of the State of Texas on the indebtedness made the basis of this suit the same were made in treasury warrants of the State of Texas between January, 1864, and July, 1865; that the warrants in which said payments were made were issued for the purpose of being circulated as money and that they were circulated as money in so far as that result could be reached by the legislation of the State of Texas because it says that by acts of the legislature of 1861, page 19, it was specially provided that treasury notes of the State should be used in the payment of all debts due the State, including the special school fund; that by the act of January 10, 1862, it was provided, among other things, that all outstanding warrants should be refunded and new warrants issued therefor, as well as for all other claims due by the State, one-tenth of which new warrants should be of the denomination of one dollar and the remainder of five dollars or more each.

40 By the act of January 11, 1862, the legislature of Texas provided that treasury warrants not bearing interest should be receivable as money in the payment of office fees, including fees for patents to lands payable in the general land office, taxes and all other debts to be collected by the State or in its name, except the special taxes for the objects of paying the principal and interest of loans, and except for sinking fund and interest of the school fund loaned to the railroad companies.

By act of January 11, 1862, it was also provided that the treasurer and every other officer of the State and every officer of the counties who, according to law, "shall have received as public money treasury warrants of the State shall disburse and transfer the same as money at par, according to the laws providing for the disbursement and transfer of money." Their failure to treat warrants as money was, by the same act on the same day, made a penal offense.

By act of January 11, 1862, it was further provided that the debt incurred by the State known as the frontier debt should be liquidated in treasury warrants at par.

By act of 1863 the legislature further provided that the treasury warrants of the State should be receivable by the comptroller of the State in payment of interest that might be then or thereafter due from the railroad companies to the special school fund, provided said payment should be made before the meeting of the next legislature.

By act of the 10th legislature, May 28th, 1864, it was provided that the treasury warrants should be receivable for all public dues,

except those payable in specie by special provision of law. By other enactments the use of such treasury warrants in all transactions was encouraged.

Wherefore plaintiff says that the treasury warrants issued and circulated by reason of the foregoing provisions of the statute were issued and intended to circulate as money. They are therefore void because in contravention of the provision of the State constitution which prohibited the issuance and circulation of treasury warrants as money. Wherefore plaintiff says that the same were void for the further reason that they were bills of credit emitted by the State in contravention of the provisions of section 10, article 1, of the Federal Constitution.

41 Wherefore plaintiff prays that the defendant be allowed no credit by reason of its pretended payments, and that it have judgment as prayed for in its original petition.

M. M. CRANE,
Att'y Gen'l, Att'y for Pl'ff, The State of Texas.

Replying further to defendant's said amended original answer, plaintiff says that if the payments were made in treasury warrants on the debt herein sued on that no credit therefor should be allowed the defendant herein, for the reason that said treasury warrants were void in this, that they were issued between the years 1860 and 1865; that most, if not all, of them were issued after 1862 and before July, 1865; that they were issued while the State was in rebellion against the Federal Government, and that they were issued in compliance with a general plan to aid the State in the prosecution of the war of rebellion against the Federal Government, because plaintiff says that the State of Texas was greatly embarrassed in its financial affairs during the period of the war of the rebellion, and that in order to further the cause in which it was engaged, to wit, the prosecution of the war, that as a matter of governmental policy it determined to issue treasury notes to meet all of the expenses of the State government, among which were the payment of soldiers in the field and the furnishing of supplies, arms, and munitions of war.

Plaintiff would show that by act of the legislature of 1862 the issuance of treasury warrants was authorized in payment of any claim for which an appropriation had been or should be made, said act being passed on the 10th day of January, 1862.

That on the 8th day of February, 1862, the legislature, by an appropriate enactment, appropriated the sum of one hundred and fifty thousand dollars or so much thereof as might be necessary as a hospital fund, to be drawn from the treasury by warrants issued by the comptroller and signed by the governor, which were indeed treasury warrants; that this fund was set apart and appropriated to establish and maintain a hospital for the benefit of the sick

42 and wounded soldiers of the State of Texas then in the Confederate army.

That on the 11th day of January, 1862, the legislature appropriated the sum of five thousand dollars or so much thereof as might

be necessary to enable the military board therein provided for to purchase arms and munitions for the manufacture of ordinances for the military defense of the State.

That on the 14th day of January, 1862, the legislature appropriated the sum of one million dollars or so much thereof as might be necessary for military purposes—that is, for the support, comfort, and efficiency of State troops called into active service, for the purchase of arms and munitions of war of all kinds that might be necessary and proper, for the manufacture of such arms and munitions and the purchase in any market of the materials therefor, for procuring necessary armories and other places for storing public military property, for the preservation, care, and use of said property, for stationary works of defense and nautical vessels and instruments, if necessary, for the necessary maintenance of troops along the interior frontier under the law for its defense, and for all necessary and proper incidents for the foregoing military purposes; and for the purpose of carrying into effect that provision all of the specie and treasury notes which might come into the State treasury from all sources, with a few exceptions therein named, were set apart for that purpose.

Plaintiff would further show that on various other occasions during the war and before the warrants in question were issued the legislature of the State of Texas appropriated large sums of money to aid in the prosecution of the war, and that the amount of money actually on hand by the said State of Texas was very small; that deficiencies were constantly occurring in all of these items, and that treasury warrants were issued therefor.

Plaintiff would further show that the legislature at various times and dates made provisions and appropriations for the support
43 and maintenance of soldiers and their families, which said soldiers were engaged in the war of the rebellion, and in so doing debts were created, and owing to deficiencies existing in the State treasury it became necessary to issue warrants therefor.

Plaintiff would further show that if any part of the indebtedness here sued upon was ever paid in warrants, as defendant alleges, that same *were* paid with those issued in whole or in part to aid in carrying on the war and for maintaining the rebellion against the constituted authorities of the United States of America.

Wherefore plaintiff says that same are utterly null and void, and that the defendant should not be allowed a credit for the same nor any part thereof; and as to all of which it puts itself upon the country.

M. M. CRANE,
Att'y Gen'l, Att'y for Pl'ff. The State of Texas.

By way of further replication plaintiff says that the defendant should not be allowed any credit by reason of any payments in treasury warrants as alleged by it, because it says that at the time said payments were made, if any such were made, said treasury warrants were almost worthless; that they had no market value, and that said railroad companies could purchase them

and procure them in the markets for a nominal, insignificant, and trifling sum, and that the State in issuing them for the purchase of any commodity was compelled to negotiate them at greatly depreciated prices; that said railroad companies had acquired them for almost nothing; if they paid them to the State at all, compelled the State to accept them at their par value; that as soon as peace was restored that the acceptance of the said depreciated warrants in payment of said debt justly owing and due by the said railroad companies was immediately repudiated by the lawful officers of the State of Texas, and that ever since said date the State has maintained that said payments were illegal and unlawful, of which said fact the de-
44 fendant company had ample and abundant notice.

The premises considered, plaintiff prays that the defendant be allowed no credit by reason of its said pretended payments, and that upon a final hearing hereof plaintiff have judgment for its debt, interest, and costs of suit, as prayed for in its original petition. It further prays for all such legal and equitable relief as it may show itself entitled to, whether general or special.

M. M. CRANE,
Attorney General, Attorney for the State of Texas.

Endorsed: No. 11915. State of Texas *vs.* Houston & Texas Central R'y Co. Plaintiff's first supplemental petition. Filed Nov. 16th, 1895. Jas. P. Hart, clerk.

Order on Application to Remove Cause to U. S. Circuit Court, December 4th, 1895.

THE STATE OF TEXAS
vs.
H. & T. C. R. R. COMPANY. } 11915.

And now, on this the 27th day of November, 1895, came on to be heard the petition of the defendant, The Houston & Texas Central Railroad Company, accompanied by bond, the sureties on which the court finds sufficient, and after hearing argument of counsel for both parties thereon the court took said matter under advisement until this 4th day of December, 1895, when, on further consideration—

It is ordered and adjudged by the court that defendant's said petition be denied and its application to remove this cause into the United States circuit court be, and it is hereby, refused; to which action and ruling of the court defendant, by its counsel, excepts.

45 *Def't's Bill of Exceptions No.* 1.

Filed December 4th, 1895.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL R. R. Co. } No. 11915.

Be it remembered that in the above numbered and entitled cause, on the 16th day of November, 1895, the defendant filed and in due

time presented to this court its petition and bond for the removal of said cause into the United States circuit court; which petition and bond are as follows, to wit:

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

To the judge of the fifty-third judicial district in and for Travis county, Texas:

Your petitioner, Houston & Texas Central Railroad Company, respectfully represents that it is the defendant in the above styled and numbered cause, pending in this honorable court; that the said cause is a suit of a civil nature, and the matter and amount in dispute therein exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and that the said suit and the controversy therein involved arises under the Constitution and laws of the United States, as fully appears from plaintiff's own statement of its claim as contained in its petition, hereinafter more particularly referred to.

46 Petitioner further represents that the suit was commenced by the State of Texas, as plaintiff, against petitioner, as defendant, in this honorable court on the 8th day of December, 1894, upon which date the plaintiff filed its original petition in this honorable court praying judgment against petitioner as defendant for the sum of $86,655.90, with 6 per cent. interest thereon, payable semi-annually, from the first day of May, 1879, to the commencement of said suit, with legal interest on said interest from the time the same was payable, alleged to be the balance due upon certain bonds in said petition described, and therein alleged to have been made, executed, and delivered by the Washington County Railroad Company to the plaintiff for a part of the special school fund of the State of Texas, alleged to have been loaned the said railroad company, and praying judgment against defendant also for the sum of $411,935.84, with 6 per cent. interest thereon, payable semi-annually, from the first day of May, 1894, to the commencement of said suit, with legal interest on said interest from the time same was payable, alleged to be the balance due upon certain bonds in said petition described, and therein alleged to have been made, executed, and delivered by the Houston & Texas Central Railway Company to the plaintiff for a part of the special school fund of the State of Texas, alleged to have been loaned the said railway company, and praying the foreclosure of a lien alleged in said petition upon the railroad and property of petitioner in said petition described, which plaintiff alleged in effect defendant had acquired from said Houston & Texas Central Railway Company, subject to the plaintiff's said lien. Petitioner avers that it did not in any way appear from plaintiff's statement of its own claim in said petition, and did not elsewhere in and

by said petition in any manner appear, that the said suit was one arising under the Constitution or laws of the United States or treaties made under their authority, but the character of said suit
47 and the parties thereto and the effect of the averments of said petition were as hereinbefore alleged and not otherwise. Petitioner refers to plaintiff's said original petition now on file in said cause, and prays that the same be taken and considered as a part and in support hereof with the same effect as if set forth at length herein.

Petitioner alleges that on the said 8th day of December, 1894, upon the filing of plaintiff's said original petition, citation duly issued in said cause to and was served upon petitioner as defendant therein, in obedience to which petitioner as such defendant was required under the laws of the State of Texas to answer the said original petition of plaintiff on the 8th day of January, 1895, and, being so required, petitioner as such defendant did in said cause, on the 7th day of January, 1895, file its original answer to the plaintiff's said petition, and to its said original answer now on file in said cause petitioner now refers and prays that the same be taken and considered as a part and in support hereof, as far as the same may be material, with the same effect as if it were set forth at length herein; and thereafter, on the 15th day of May, 1895, petitioner as said defendant, as authorized by the laws of the State of Texas and with leave of this honorable court, filed in said cause its first amended original answer in lieu of and as a substitute for its original answer aforesaid, and to its said first amended original answer now on file in said cause petitioner now refers and prays that the same be taken and considered as a part and in support hereof, as far as the same may be material, with the same effect as if it were set forth at length herein.

Petitioner avers that in and by both its original answer and its first amended original answer it pleaded specifically and in manner and form required by the laws of the State of Texas and by the rules governing the practice and procedure of this honorable court the payment and satisfaction in full of plaintiff's claim
48 and demand sued on in said cause long prior to the commencement of the said suit and the extinguishment and satisfaction thereby of the lien upon petitioner's property alleged in plaintiff's said original petition and sought to be foreclosed in said suit, and, by reason of such payments, denied that either petitioner, The Houston & Texas Central Railway Company, or the Washington County Railroad Company was indebted to plaintiff in any sum whatsoever, or that plaintiff had any lien upon petitioner's property in said petition described or referred to; that among the payments upon the bonds of the Houston & Texas Central Railway Company and alleged indebtedness of that company described in plaintiff's said original petition and specially pleaded by petitioner in its said original answer and in its said first amended original answer was the sum of $23,466.76 paid on January 20th, 1864; $6,670.00 paid on March 30th, 1864; $19,009.92 paid on April 19th, 1864; $31,660.69 paid on July 13th, 1864; $2,000.00 paid on

August 20th, 1864, and $22.966.98 paid on August 24th, 1864, making a total of $105,774.35 paid by the Houston & Texas Central Railway Company to plaintiff, as authorized by the valid laws of the State of Texas then in force, in the treasury warrants of the State of Texas theretofore duly executed by said State and on the several dates when the same were paid, as aforesaid, *consisting* valid obligations of the said State, and among the payments upon the bonds of the Washington County Railroad Company and alleged indebtedness of that company or of the Houston & Texas Central Railway Company described in plaintiff 's said original petition specially pleaded by petitioner in said original answer and its said first amended original answer was the sum of $12,755.41 paid on the 11th day of July, 1864; the sum of $2,790.99 paid on the 25th day of August, 1864; the sum of $3,880.80 paid on the 11th day of May, 1865, and the sum of $27,663.00 also on the 11th day of May, 1865, making a total of $49,090.20 paid by the said Washington County Railroad Company to plaintiff, as authorized by the valid
49 laws of the State of Texas, in treasury warrants of the State of Texas theretofore duly executed by said State and on the several dates when the same were paid, as aforesaid, constituting valid obligations of the said State.

Petitioner further avers that afterward, to wit, on the 16th day of November, 1895, plaintiff in said cause, The State of Texas, with leave of this honorable court, and as it was authorized and had the right under the laws of the State of Texas and the rules governing this honorable court to do, filed its "first supplemental petition," wherein and whereby the plaintiff demurred to the said first amended original answer of petitioner, as defendant in said cause, upon the grounds, among others, and in words as follows, to wit:

(1.) "That it sets out and pleads three several acts of the legislature of the State as authority for the payment of the debts made the basis of this suit in treasury warrants, State bonds, and Confederate notes; which said acts were passed without constitutional authority and were null and void in this, that they specifically attempted to authorize the destruction and diversion of a special fund given to the State of Texas by the Federal Congress for special purposes and by previous acts of the legislature set apart as the special school fund, and that the said public schools of Texas had a vested right in said fund, and that the legislature had no subsequent authority to destroy said fund.

(2.) Because, plaintiff says, said paragraph 7 of defendant's first amended original answer is insufficient in this, that said acts of the legislature therein pleaded, together with others passed at and about the same time and during the continuance of the war between the States, commonly denominated the 'rebellion,' plainly show that the treasury warrants and other obligations in which it is alleged that the railroad companies were authorized to pay and in which they did pay a portion of the debts made the basis of this suit were utterly null and void for the following reasons:

50 First. Because said treasury warrants in which said payments were authorized to be made and were made were issued

for the purpose of being circulated as money, and were, therefore, utterly null and void because contrary to the provisions of the State constitution, which prohibited such use of treasury notes.

Second. Because said warrants were bills of credit emitted by the State and therefore violative of section 10, article 1, of the Constitution of the United States.

Third. Because the several acts plainly indicate that said treasury warrants and other obligations in which said payments were authorized to be made and were made were issued in aid of the rebellion against the Government of the United States of America, and were therefore void."

And in and by said first supplemental petition filed, as aforesaid, in said cause it was by the State of Texas alleged:

"That if any payments were made in treasury warrants of the State of Texas on the indebtedness made the basis of this suit the same were made in treasury warrants of the State of Texas between January, 1864, and July, 1865; that the warrants in which said payments were made were issued for the purpose of being circulated as money, and that they were circulated as money of the State of Texas, because it says that by Acts of the Legislature of 1861, page 19, it was specially provided that treasury notes of the State should be used in the payment of all debts due the State, including the special school fund; that by the act of January 10, 1862, it was provided, among other things, that all outstanding warrants should be refunded and new warrants issued therefor, as well as for all other claims due by the State, one-tenth of which new warrants should be of the denomination of one dollar and the remainder of five dollars or more each.

By the act of January 11, 1862, the legislature of Texas provided that treasury warrants not bearing interest should be receiv-
51 able as money in the payment of office fees, including fees for patents to lands payable in the general land office, taxes, and all other debts to be collected by the State or in its name except the special taxes for the objections of paying the principal and interest of loans and except the sinking fund and interest of the school fund loaned to the railroad companies.

By act of January 11, 1862, it was also provided that the treasurer and every other officer of the State and every officer of the counties who, according to law, 'shall have received as public money treasury warrants of the State shall disburse and transfer the same as money at par according to the laws providing for the disbursement and transfer of money.' Their failure to treat warrants as money was by the same act on the same day made a penal offence.

By an act of January 11, 1862, it was further provided that the debt incurred by the State, known as the frontier debt, should be liquidated in treasury warrants at par.

By act of 1863 the legislature further provided that the treasury warrants of the State should be receivable by the comptroller of the State in payment of interest that might be then or thereafter due from railroad companies to the special school fund, provided such

payments should be made before the meeting of the next legislature.

By act of the 10th legislature, May 28th, 1864, it was provided that the treasury warrants should be receivable for all public dues except those payable in specie by special provision of law. By other enactments the use of such treasury warrants in all transactions was encouraged.

Wherefore plaintiff says that the treasury warrants issued and circulated by reason of the foregoing provisions of the statute were issued and intended to circulate as money. They were, therefore, void because in contravention of the provision of the State
52 constitution which prohibited the issuance and circulation of treasury warrants as money. Wherefore plaintiff says that the same were void for the further reason that they were bills of credit emitted by the State in contravention of the provisions of section 10, article 1, of the Federal Constitution.

Wherefore plaintiff prays that the defendant be allowed no credit by reason of its pretended payments, and that it have judgment as prayed for in its original petition.

Replying further to defendant's said amended original answer, plaintiff says that if the payments were made in treasury warrants on the debt here sued on that no credit therefor should be allowed the defendant herein, for the reason that said treasury warrants were void in this, that they were issued between the years 1860 and 1865; that most, if not all, of them were issued after 1862 and before July, 1865; that they were issued while the State was in rebellion against the Federal Government, and that they were issued in compliance with a general plan to aid the State in the prosecution of the war of rebellion against the Federal Government, because plaintiff says that the State of Texas was greatly embarrassed in its financial affairs during the period of the war of the rebellion, and that in order to further the cause in which it was engaged, to wit, the prosecution of the war, that as a matter of governmental policy it determined to issue treasury notes to meet all the expenses of the State government, among which were the payment of soldiers in the field and the furnishing of supplies, arms, and munitions of war.

Plaintiff would show that by the act of the legislature of 1862 the issuance of treasury warrants was authorized in payment of any claim for which an appropriation had been or should be made, said act being passed on the 10th day of January, 1862.

That on the 8th day of February, 1862, the legislature, by an appropriate enactment, appropriated the sum of one hundred
53 and fifty thousand dollars, or so much thereof as might be necessary, as a hospital fund, to be drawn from the treasury by warrants issued by the comptroller and signed by the governor, which were indeed treasury warrants; that this fund was set apart and appropriated to establish and maintain a hospital for the benefit of the sick and wounded soldiers of the State of Texas then in the Confederate army.

That on the 11th day of January, 1862, the legislature appro-

priated the sum of five thousand dollars, or so much thereof as might be necessary, to enable the military board therein provided for to purchase arms and munitions for the manufacture of ordinances for the military defense of the State.

That on the 14th day of January, 1862, the legislature appropriated the sum of one million dollars, or so much thereof as might be necessary, for military purposes—that is, for the support, comfort, and efficiency of State troops called into active service—for the purchase of arms and munitions of war of all kinds that might be necessary and proper; for the manufacture of such arms and munitions and the purchase in any market of the materials therefor; for procuring necessary armories and other places for st-rong public military property; for the preservation, care, and use of said property; for stationary works of defense and nautical vessels and instruments, if necessary, for the necessary maintenance of troops along the interior frontier under the law for its defense, and for all necessary and proper incidents for the foregoing military purposes, and for the purpose of carrying into effect that provision all of the specie and treasury notes which might come into the State treasury from all sources, with a few exceptions therein named, were set apart for that purpose.

Plaintiff would further show that on various occasions during the war, before the warrants in question were issued, the legislature of the State of Texas appropriated large sums of money to aid in the prosecution of the war, and that the amount of money actually
54 on hand by the said State of Texas was very small; that deficiencies were constantly occurring in all of these items, and that treasury warrants were issued therefor.

Plaintiff would further show that the legislature at various times and dates made provisions and appropriations for the support and maintenance of soldiers and their families, which said soldiers were engaged in the war of the rebellion, and in so doing debts were created, and owing to deficiencies existing in the State treasury it became necessary to issue warrants therefor.

Plaintiff would further show that if any part of the indebtedness here sued upon was ever paid in warrants, as defendant alleges, that same were paid with those issued in whole or in part to aid in carrying on the war and for maintaining the rebellion against the constituted authorities of the United States of America, and that they were void by reason of the operation of the 14th amendment to the Federal Constitution.

Wherefore plaintiff says that same are utterly null and void, and that the defendant should not be allowed a credit for the same, nor any part thereof; and as to all of which it puts itself upon the country."

Your petitioner here refers to plaintiff's said first supplemental petition and prays that the same be taken and considered as a part and in support hereof with the same effect as if it were set forth at length herein.

Petitioner further avers that the nature and only object and purpose of said suit is to set aside and avoid the payments in the treasury

warrants of the State of Texas made, as hereinbefore alleged, by the Houston & Texas Central Railway Company and the Washington County Railroad Company, respectively, to said State on the bonds and former indebtedness described and referred to in plaintiff's original petition, upon the grounds and
55 for the reasons presented and set forth by plaintiff in its first supplemental petition hereinbefore stated and referred to, and plaintiff's right of action against petitioner, as defendant in said suit, arises, if at all, under the Constitution and laws of the United States referred to and invoked by plaintiff in its first supplemental petition above referred to and stated, and plaintiff's right of action and defendant's liability in said suit are wholly dependent upon the construction of the Constitution and laws of the United States in their effect upon and application to the issues in said suit presented for the first time by plaintiff's first supplemental petition, filed as aforesaid.

Plaintiff further avers that the only petitions or other pleadings filed in said suit by The State of Texas, the plaintiff therein, are the original petition of plaintiff, filed, as aforesaid, on the 8th day of December, 1894, and the "first supplemental petition" of plaintiff, filed, as aforesaid, on the 16th day of November, 1895; and petitioner avers that the fact that the said suit arises under the Constitution and laws of the United States did not in any way appear from plaintiff's petition or from plaintiff's statement of its own claim in any manner until the filing by plaintiff of its said first supplemental petition on the 16th day of November, 1895, as hereinbefore alleged, and until then the right of defendant to remove this cause into the circuit court of the United States upon the ground that it was and is a suit arising under the Constitution and laws of the United States or treaties made under their authority, or upon any other grounds whatsoever, did not exist.

Petitioner further avers that the said suit has never been tried and no question therein has ever been determined in or by this honorable court, but the same has been continued or passed by consent of parties, plaintiff and defendant, without trial and without ever having been called for trial, and has not been called or set for trial at the present term of this honorable court. Petitioner avers that, as defendant in said suit, it has not as yet been re-
56 quired by the laws of Texas or by any rule of this court to answer or plead to the first supplemental petition of the plaintiff in said suit, filed, as aforesaid, on the — day of ——, 1895, but, on the contrary, petitioner has the right, under the laws of the State of Texas and the rules governing this court, to answer plaintiff's said first supplemental petition at any time before the parties to said suit announced themselves ready for trial.

Your petitioner offers herewith a bond, with good and sufficient sureties, for its entering in the circuit court of the United States for the western district of Texas, on the first day of its next session, a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if said court shall hold that this the said suit was wrongfully or improperly removed thereto.

Wherefore petitioner prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept this petition and said bond, and to cause the record herein to be removed into said circuit court of the United States in and for the western district of Texas; and petitioner will ever pray.

J. P. BLAIR,
BAKER, BOTTS, BAKER & LOVETT,
Attorneys for Houston & Texas Central.
Railroad Company, Petitioner.

(Endorsed:) No. 11915. The State of Texas *vs.* H. & T. C. R. R. Co. Petition for removal. Copy. Filed Nov. 16, 1895. Jas. P. Hart, cl'k D. C., T. Co.

57 In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Know all men by these presents that the Houston & Texas Central Railroad Company, as principal, and C. Lombardi and Jas. A. Baker, Jr., as sureties, are held and stand firmly bound unto the State of Texas in the penal sum of one thousand dollars; for the payment *of* whereof, well and truly to be made unto the said State of Texas, we bind ourselves, jointly and severally, firmly by these presents.

Upon condition, nevertheless, that whereas the said Houston & Texas Central Railroad Company has petitioned the district court of the fifty-third judicial district in and for Travis county, in the State of Texas, and held therein, for the removal of a certain cause therein pending, wherein The State of Texas is plaintiff and the said Houston & Texas Central Railroad Company is defendant, into the circuit court of the United States in and for the western district of Texas:

Now, therefore, if the said Houston & Texas Central Railroad Company shall enter into the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit and shall well and truly pay all costs that may be awarded by the said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and virtue.

58 In witness whereof the said Houston & Texas Central Railroad Company and the said —— —— and —— —— have hereunto subscribed their names this the fifteenth day of November, A. D. 1895.

HOUSTON & TEXAS CENTRAL
RAILROAD COMPANY,
By BAKER, BOTTS, BAKER & LOVETT.
C. LOMBARDI.
JAS. A. BAKER, JR.

(Endorsed:) No. 11915. The State of Texas *vs.* H. & T. C. R. R. Co. Bond for removal. Filed Nov. 16, 1895. Jas. P. Hart, cl'k D. C., T. Co.

And on consideration thereof, and while affirming the sufficiency of said bond, it was on this 4th day of December, 1895, ordered and adjudged by the court that said petition be, and the same was, denied, and said application to remove this cause as prayed in said petition was refused; to which action and ruling of the court counsel for said defendant then and there excepted, and now tenders this *their* bill of exceptions, and prays that same be allowed and filed as part of the record in this cause, and it is so ordered.

F. G. MORRIS,
Judge Presiding.

(Endorsed:) No. 11915. The State of Texas *vs.* H. & T. C. R. R. Co. Defendant's bill of exceptions No. 1. Filed Dec. 4th, 1895. Jas. P. Hart, clerk D. C., T. C.

Plaintiff's First Amended Supplemental Petition.

Filed January 16th, 1896.

In the District Court of Travis County, Texas, 53rd Judicial District.

THE STATE OF TEXAS
vs.
THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY.

59 To the honorable district court of said district and State:

Now comes the plaintiff, The State of Texas, by its attorney general, and with leave of the court files this its first amended supplemental petition, amending and correcting its first supplemental petition, filed herein on the — day of ——, 1895, and in reply to defendant's amended original answer filed herein says:

I.

That the several counts in said defendant's first amended original answer are entirely insufficient in law and equity, and that no defense to plaintiff's action is thereby interposed or pleaded in either or any of said counts; and of this it prays the judgment of the court.

M. M. CRANE,
Att'y Gen'l, Attorney for Plaintiff, The State of Texas.

II.

1. And, specially excepting, plaintiff says that all that portion of defendant's first amended original answer which pleads that the funds which were borrowed by the railroad companies from the State of Texas was the special school fund of the State of Texas set apart by the several acts of the legislature which were pleaded and

referred to by defendant, and that after having borrowed said money the acts of the legislature authorized the payment of the interest and principal thereof in treasury warrants of the State of Texas, and that the same was so paid in treasury warrants, is wholly insufficient, because, as is judicially known to the court, the treasury warrants were utterly worthless or nearly so, and the statutes authorizing the payment of the principal and interest of the said special and perpetual school fund which had been previously appropriated as a permanent fund for the support of the free
60 schools constituted a diversion of said fund to other uses than that for which it had been set apart, and therefore was in contravention of section 2, article X, of the constitution of Texas of 1845, and in contravention of section 2, article X, of the constitution of the State as amended in 1861.

2. Plaintiff excepts to all that part of said answer which sets up the payment of said debt in said treasury warrants as being utterly insufficient in this: The pleading shows that the treasury warrants relied upon were issued by the State of Texas for the purpose of being circulated as money, and that they were circulated and used by the State officers as money, and that they were therefore void because in contravention of section 8, article VII, of the constitution of the State of Texas of 1845, which prescribes that in no case shall the legislature have the power to issue treasury warrants, treasury notes, or paper of any description intended to circulate as money, and in contravention of section 8, article VII, of the constitution of the State as amended by the convention of 1861, which prohibited the issuance of treasury warrants, treasury notes, or paper of any description intended to circulate as money.

3. Plaintiff specially excepts to all that part of said answer which sets up the payment of said indebtedness in treasury warrants, because the several acts of the legislature upon which they are based show that the same were issued with the intention of being circulated as money, and that the same were circulated and used by the State officers as money, and that therefore they are void and of no effect because issued in violation of section 10, article I, of the Constitution of the United States, which prohibits the States from emitting bills of credit or making anything but gold and silver coin a tender in payment of debts.

4. Plaintiff specially excepts to all that portion of said answer which sets up the payment of said debt in treasury warrants,
61 because the same and the acts of the legislature which authorized their issuance show that they were issued and circulated in order to aid the then authorities of the State of Texas in prosecuting a war of rebellion against the Government of the United States, and that said payments were authorized and were indeed made for the purpose of aiding the State in prosecuting the war.

5. Plaintiff specially excepts to all that portion of said answer in which payments in treasury warrants are set up, because it says that the people, in constitutional convention assembled in 1866, by ordinance declared all said warrants in which said pretended payments were made to be utterly void and of no effect, and further

because article XII, section 34, of the constitution of 1869 reiterated and repeated the same declaration. Wherefore plaintiff says that the acts of the agents of the State were then and there utterly repudiated, and that said payments, if ever effective, became utterly null and void from said date.

6. Plaintiff specially excepts to said answer for the reason that same does not show the date, the denomination, nor the purposes for which said warrants were issued in which the alleged payments were made.

Of all of which plaintiff prays the judgment of the court.

M. M. CRANE,
Att'y Gen'l, Attorney for Plaintiff, The State of Texas.

III.

And, answering, plaintiff denies all and singular the allegations contained in defendant's said answer aforesaid, and demands strict proof of the same.

M. M. CRANE,
Att'y Gen'l, Attorney for Plaintiff, The State of Texas.

62 IV.

And, for special replication to the allegations made in defendant's said first amended original answer, plaintiff says that if any payments were made in treasury warrants of the State of Texas on the indebtedness made the basis of this suit the same were made in treasury warrants of the State of Texas issued after the ordinance of secession had been passed by the State of Texas, and, indeed, after the 1st day of January, 1862, and after the act of January 10, 1862, which provided that all outstanding warrants of the State of Texas should be refunded and new warrants issued therefor, as well as for all other claims due by the State, one-tenth of which new warrants should be of the denomination of one dollar and the remainder of five dollars or more each, and plaintiff avers and here charges that if said payments were made in said warrants the defendant is entitled to no credit therefor, because *of* said treasury warrants in which said payments were pretendedly made, if made at all, were issued for the purpose of being circulated as money, and that by several acts of the legislature passed after their issuance and before said payments were made they were made and intended to be made to circulate as money, and that the several acts providing that the State authorities should receive them in payment of the interest and principal of the debt sued on were enacted and said payments received for the sole purpose of enabling the said treasury warrants to circulate as money and to create a demand therefor so as to give same some little intrinsic value.

Wherefore plaintiff says that the same were utterly void and the said payments made thereon a nullity, because the same were contrary to the provisions of the State constitution—that is to say, of section 8, article VII, of the constitution of Texas of 1845, and of section 8, article VII, of the same constitution as amended in 1861,

which declared that in no case should the legislature have the power to issue treasury warrants, treasury notes, or paper of
63 any description intended to circulate as money.

Plaintiff further avers that said payments were utterly null and void for the reasons above stated; that said paper was intended at the date of its issuance to circulate as money, and that it was the intention of the legislature in the several acts providing for its circulation and disbursement as money and for its acceptation by the State in the payment of its debt so intended to circulate it as money, and that therefore said payments were utterly void because contrary to article 1, section 10, of the Constitution of the United States, which prohibits all the States of the American Union from the emission of bills of credit and from making anything but gold and silver coin a tender for the payment of debts, because plaintiff avers that the purpose of said acts and the objects had in view by the legislature was to make the treasury notes in which said payments were made bills of credit and a legal tender for the payment of all debts due the State and a legal tender for payment of the debts due the special school fund, for which this suit is brought.

Wherefore plaintiff prays that defendant be allowed no credit by reason of said pretended payments, and that it have judgment as prayed for in its original petition.

For further special replication to defendant's said answer plaintiff says that if any payments were made in treasury warrants on the debt herein sued on no credit therefor should be allowed the defendant herein for the reason that said treasury warrants were void in this, that they were issued during the war of the rebellion—that is to say, after the State of Texas, in convention assembled, had declared its purpose of seceding from the Union and had attached itself to the Southern Confederacy; that said treasury warrants were issued while the State was in open rebellion against the United States Government; that they were issued in
64 compliance with a general plan to aid the State in the prosecution of the war of rebellion against the Federal Government, because plaintiff says that the State of Texas was greatly embarrassed in its financial affairs during the period of the war of rebellion, and that in order to further the cause in which it was engaged, to wit, the prosecution of the war, that as a matter of governmental policy it determined to issue the treasury notes to meet all of the expenses of the State government, among which were the payment of the soldiers in the field, the furnishing of supplies, arms, and munitions of war to the armies engaged in the cause of the Confederacy against the United States Government; that among other things appropriations were made to form and equip soldiers, to provide clothing and supplies for the same, to purchase and establish armories, to purchase vessels, and to do everything else that might be necessary to equip and furnish an army and navy with the munitions of war and the means of prosecuting the same; that large and vast sums of money were appropriated to establish hospitals for the sick and wounded of the Confederate

armies and to take care of and provide for the families of the Confederate soldiers who were then absent, fighting against the United States Government; that by law it was specially provided that treasury warrants should be drawn on the treasury for all such appropriations; that the depleted condition of the treasury rendered their payment by the treasury impracticable, and that therefore treasury warrants were made to circulate and did circulate and do duty as money; that the size, denominations, character, and appearance of said notes all indicated that the purpose was to have them circulate as money, and that the same were issued in order to enable the State to prosecute its purpose and to aid the Confederate States in the war of rebellion as aforesaid.

Plaintiff would further show that the warrants with which the payments were made, if any were made, were issued in whole
65 or in part to aid in carrying on the war and for maintaining a rebellion against the constituted authorities of the United States of America, and that the same were void because made so by the fourteenth amendment to the Constitution of the United States.

Wherefore plaintiff says that the same are utterly null and void, and defendant should not be allowed a credit for them nor any part thereof, and as to all of which it puts itself upon the country.

By way of further replication plaintiff says that the defendant should not be allowed any credit by reason of any payments in treasury warrants as alleged by it, because it says that at the dates said payments were made said treasury warrants were almost worthless, that they had no market value, and that said railroad companies to which the loans were made could purchase them and did so purchase them in the market for a nominal, trifling, and insignificant sum—that is to say, not exceeding 8 or 10 cents on the dollar, or for 8 or 10 cents one dollar of said warrants could be procured, and that for the most part said warrants could be procured for nothing; that said railroad companies procured them for almost nothing, and that by fraudulent conspiracy with the State officers then in charge of the governmental affairs they prevailed upon them to accept said warrants at their par or face value; that as soon as peace was restored the acceptance of said depreciated warrants in payment of said debt justly due and owing by said railroad companies was immediately repudiated by the lawful officers of the State of Texas, and that ever since that time the State has maintained that said payments were illegal and unlawful, of which said fact the defendant company had ample and abundant notice.

Premises considered, plaintiff prays that defendant be allowed no credit by reason of the pretended payments, but that if any credit be allowed defendant that it be credited only with the cash value of said warrants at the time when same were delivered to the
66 authorities of the State of Texas in payment of said debts.

Plaintiff further prays for all such legal and equitable relief as it may show itself entitled to, whether general or special.

M. M. CRANE,
Att'y Gen'l, Attorney for Plaintiff, The State of Texas.

(Endorsed:) 11915. State of Texas *vs.* H. & T. C. R. R. Co. First amended supplemental petition. Filed January 16th, 1896. Jas. P. Hart, clerk.

Def't's First Supplemental Answer.

Filed January 16th, 1896.

In the 53rd Judicial District Court in and for Travis County, at Austin.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Now comes The Houston & Texas Central Railroad Company, defendant in the above styled and numbered cause, by its attorneys, and reserving its exceptions to the action of this court in denying its application to remove this cause into the United States circuit court for the western district of Texas, and denying the jurisdiction of this court since said application for removal was presented herein, and protesting against further proceedings herein by this court, files this its first supplemental answer, by leave of court, in response to plaintiff's first amended supplemental petition herein filed on the 16th day of January, A. D. 1896, and demurs to plaintiff's said first amended supplemental petition, and
67 says the same is insufficient in law, and of this it prays judgment of the court.

II.

And, further answering herein, defendant specially excepts to the first special plea contained in said first amended supplemental petition and to so much of said first supplemental petition as alleges in effect that the treasury warrants therein referred to were void because issued in violation of the provision of the constitution of the State of Texas prohibiting the issuance of treasury warrants intended to circulate as money and because they were bills of credit emitted by the State in contravention of the provisions of section 10, article 1, of the Constitution of the United States, and as ground of exception defendant says:

(1.) That if it be true, as alleged in said petition, that said treasury warrants were issued in violation of the constitution of the State of Texas and of the Constitution of the United States, yet defendant says that they were so issued by the State of Texas, and after having been so issued the State of Texas received such treasury warrants from said railway companies in making such payment and accepted the same without apparent protest or objection, and that upon such payment and acceptance the transaction became and was immediately completed and fully executed, and the State of Texas, being the wrong-doer, is not entitled to have the same reopened and set aside in order that it may have relief against its own wrong, if there was wrong.

(2.) That if it be true, as alleged by plaintiff, that said treasury warrants were issued in violation of the constitution of the State of Texas and of the Constitution of the United States they were so issued by plaintiff, The State of Texas, and by it put in circulation among its citizens, and it cannot now take advantage of its own wrong, as it is seeking to do in and by said plea.

(3.) That if it be true, as alleged in said supplemental petition, that said treasury warrants were issued in violation of the constitution of the State of Texas and of the Constitution of the United States, and that the several acts of the legislature of the State of Texas set forth and referred to in said supplemental petition were passed to encourage the circulation of said warrants as money, defendant says that, the State of Texas having so issued said warrants and so encouraged and promoted their circulation
68 among its citizens, it is now estopped to question or deny their validity in this action, instituted in its own behalf.

(4.) That the State of Texas having issued said treasury warrants, and having by appropriate legislative enactment contracted with said railway companies and those under whom defendant claims to receive the same in payment of a part of the indebtedness to it due by the companies under which defendant claims, and having actually received such treasury warrants as such payment without protest or objection, the State of Texas cannot now repudiate its own action in the premises, and is estopped to deny the validity of the warrants so paid or the validity of said payment.

(5.) That if it be true, as alleged, that said treasury warrants were issued in violation of the constitution of the State of Texas and of the United States defendant says that the same having been so issued by the State of Texas, and also that the State of Texas received and accepted them in payment, as alleged, apparently without protest or objection, and the transaction in which said payment was made having been fully executed, the State of Texas cannot now, if it ever could, question or deny the legality of the warrants so paid or the validity of the payment so made to and accepted by the State of Texas.

And — all of this defendant prays judgment of the court.

III.

And, further answering, defendant specially excepts to the second special plea contained in said first amended supplemental
69 petition and to so much of said supplemental petition as alleges in effect that credit should not be allowed for payments made in treasury warrants, and that such treasury warrants were illegal because it is alleged that they were issued in aid of the "rebellion," and as ground of demurrer defendant says:

(1.) That if it be true, as alleged by plaintiff, that the warrants used in making the payment in question were issued in aid of the so-called "rebellion" defendant says that they were so issued by the State of Texas, and that in issuing said warrants and in contracting and agreeing with said railway companies to receive the same

and in receiving and accepting the same from them as such payment the State of Texas was and is *in pari delicto*, and is not entitled to any relief against said payment.

(2.) That if it be true, as alleged, that said treasury warrants were issued in aid of the so-called "rebellion," yet defendant says that they were so issued by the State of Texas, and after having so issued them the State of Texas received such treasury warrants from said railway companies in making such payment and accepted the same without apparent protest or objection, and that upon such payment and acceptance the transaction became and was immediately completed and fully executed, and that the State of Texas, being the wrong-doer, is not entitled to have the same reopened and set aside in order that it may have relief against its own wrong.

(3.) That if it be true, as alleged by plaintiff, that said treasury warrants were issued in aid of the so-called "rebellion" they were so issued by plaintiff, The State of Texas, and by it put in circulation among its citizens, and it cannot now take advantage of its own wrong, as it is seeking to do in and by said plea.

(4.) That if it be true, as alleged in said supplemental petition, that said treasury warrants were issued in aid of the so-called "rebellion," and that the several acts of the legislature of the State of Texas set forth and referred to in said supplemental petition were passed to encourage the circulation of said warrants as
70 money, defendant says that the State of Texas having so issued said warrants and so encouraged and promoted their circulation among its citizens, it is now estopped to question or deny their validity in this action instituted in its own behalf.

(5.) That the State of Texas having issued said treasury warrants, and having by appropriate legislative enactment contracted with defendant or those under whom defendant claims to receive the same in payment of a part of the indebtedness to it due by the companies under which defendant claims, and having actually received such treasury warrants as such payment without protest or objection, the State of Texas cannot now repudiate its own action in the premises, and is estopped to deny the validity of the warrants so paid or the validity of said payment.

(6.) That if it be true, as alleged, that said treasury warrants were issued in aid of the so-called "rebellion" defendant says that the same having been issued by the State of Texas, and also that the State of Texas received and accepted them in payment, as alleged, apparently without protest or objection, and the transaction in which said payment was made having been fully executed, the State of Texas cannot now, if it ever could, question or deny the legality of the warrants so paid or the validity of the payments so made to and accepted by the State of Texas.

And of all this defendant prays judgment of the court.

IV.

And, further answering, said defendant further excepts to the said special plea contained in said first amended supplemental petition

and to so much of said supplemental petition as alleged in effect that the said treasury warrants at the time such payments were made were practically worthless and without market value, and that such payments were repudiated by the officers of the State soon after the close of the war, and as ground for exception defendant says:

71 (1.) The market or other value of said warrants at the time such payments were made is immaterial and irrelevant to any issue in this case.

(2.) The State has no cause for complaint by reason of having paid the face value of her indebtedness.

(3.) It appears that the times when it is alleged said payments were sought to be repudiated by the officers of the State of Texas were long after such payments had been made and the transaction had been fully completed and executed.

And of this defendant prays judgment of the court.

V.

And, further answering, defendant comes, by its attorneys, and denies all and singular the allegations in plaintiff's said first amended supplemental petition contained; and of this it puts itself upon the country.

VI.

And, for further plea in this behalf, defendant comes, by its attorneys, and specially denies that, as alleged by plaintiff, the treasury warrants used in making the several payments alleged in defendant's first amended answer herein were issued for the purpose of being circulated as money or were issued in aid of the "rebellion," and defendant says, on the contrary, the warrants so used in making such payment were issued in the exercise of the powers and in the performance of the duties conferred upon the comptroller by laws in force in the State of Texas ever since its annexation, and in the ordinary transactions of the business of the government, and to pay appropriations duly made by the legislature for the ordinary and lawful expenses of the government, including payment for salaries of legislative, judicial, and executive officers, but then in excess of the revenues for the time being of the State government and above the available fund then in the State treasury.

Wherefore defendant prays judgment.

72 VII.

And for further plea in this behalf defendant says that if it be true, as alleged by plaintiff, and which defendant denies, that the treasury warrants used in making the payments in question and paid in, as set forth and pleaded in defendant's first amended original answer herein, on the indebtedness sued on, were issued in violation of the provision of the Constitution of the State of Texas prohibiting the issuance of treasury warrants intended to circulate as money, or that they were bills of credit emitted by the State, in violation of the Constitution of the United States,

or were issued in aid of the "rebellion," defendant says that they were so issued by the State of Texas and put in circulation by it among its citizens, who were induced, if not coerced, by the State to accept the same; that after contracting and agreeing with the defendant and other railway companies of the State, by the acts approved December 16th, 1863; May 24th, 1864, and November 16th, 1864, set forth in defendant's first amended original answer herein, to receive and accept said treasury warrants under the terms and conditions in said act specified, in payment of the amount due as interest and sinking fund on the school fund loan to defendant, The State of Texas, as alleged in defendant's first amended original answer herein, did receive and accept, upon the dates therein alleged, the said treasury warrants, without objection or protest, and applied the same as a payment upon the indebtedness sued on and gave defendant credit therefor upon its books in the comptroller's department, as in said amended answer alleged; that at the time said payments in treasury warrants were made to and accepted by the State of Texas and at the time the several acts of the legislature authorizing such payments were passed the State of Texas was in full exercise and enjoyment of all its governmental powers, and its laws were in force throughout its territorial limits, and all persons therein were subject thereto; that when said payments were made they
73 were in all respects valid and binding, and the transaction was legal and in accordance with the valid laws of the State then in force and with the laws then uniformly observed and enforced throughout the limits of the State of Texas and to which all persons therein were subject, and any subsequent legislation or constitutional provision which may be construed as intended to invalidate the same is contrary to the Constitution of the United States, and therefore void; that said warrants were used in making such payments at the invitation and in accordance with the wish of the State of Texas as expressed by its valid laws then in force, and received and accepted by the State of Texas as such payments willingly and without protest or objection of any kind at the time, and due credit for such payments was then and there given and allowed by the State of Texas upon its books; and defendant says that upon the tender of such warrants to the State of Texas, and the receipt and acceptance of the same by said State, and the allowance by the State upon its books of due credit therefor, the transaction in which such warrants were so paid to and accepted by the State immediately became completed and was fully executed and has ever since so remained; and defendant says that the State of Texas, being the wrong-doer, if there was wrong, is not entitled to have said completed and executed transaction reopened and set aside and relief given it against its own wrong. Wherefore defendant prays judgment.

VIII.

And, for further plea in this behalf, defendant says that if it be true, as alleged by plaintiff, but which defendant denies, that the treasury warrants used in making the payments in question were

issued in aid of the so-called "rebellion," and that for that reason the payment in them was illegal, defendant says that they were so issued, if at all, by the State of Texas; that the State of Texas encouraged and invited defendant and other railway companies of the State to use the same in making such payments, and that
74 the State of Texas received and accepted such warrants as such payment without protest or objection and allowed due credit therefor, and that therefore the State of Texas is *in pari delicto*, and, that the transaction having been fully completed and executed, the State is not entitled to any relief against such payment and cannot avoid the credits duly given and allowed by it therefor upon its books and records and dispute the same by showing its own wrongful and unlawful action.

IX.

And, for further plea in this behalf, defendant says that if it be true, as alleged by plaintiff, but which defendant denies, that the treasury warrants used in making the payments in question were issued in violation of the provision of the constitution of the State of Texas prohibiting the issuance of treasury warrants intended to circulate as money, and for that reason the payment in question was illegal, defendant says that they were so issued, if at all, by the State of Texas; that the State of Texas encouraged and invited defendant and other railway companies of the State to use the same in making such payment, and that the State of Texas received and accepted such warrants as such payments without protest or objection, and allowed defendant credit therefor, and that therefore the State is *in pari delicto*, and, the transaction having been fully completed and executed many years ago, the State is not entitled to any relief against such payments and cannot avoid the credits duly given and allowed by it therefor upon its books and records or dispute the same by showing its own wrongful and unlawful action.

X.

And, for further plea in this behalf, defendant says that if it be true, as alleged by plaintiff, but which defendant denies, that the treasury warrants used in making the payments in question were bills of credit emitted by the State in contravention of the pro-
75 visions of section 10, article 1, of the Constitution of the United States, prohibiting the issuance of treasury warrants intended to circulate as money, and that for that reason the payment in them was illegal, defendant says that they were so issued, if at all, by the State of Texas; that the State of Texas encouraged and invited defendant and other railway companies of the State to use the same in making such payments, and that the State of Texas received and accepted such warrants as such payments without protest or objection, and allowed defendant credit therefor, and that therefore the State of Texas is *in pari delicto*, and, the transaction having been fully completed and executed many years ago, the State is not entitled to any relief against such payment, and cannot avoid

the credits duly given and allowed by it therefor upon its books and records or dispute the same by showing its wrongful and unlawful action.

XI.

And, for further plea in this behalf, defendant adopts and reiterates all the allegations contained in its first amended original answer herein filed, and prays as it therein prayed.

J. P. BLAIR,
BAKER, BOTTS, BAKER & LOVETT,
Attorneys for Houston & Texas Central Railroad Co.

(Endorsed:) No. 11915. The State of Texas *vs.* The Houston & Texas Central Railroad Co. Defendant's first supplemental answer. Filed Jan'y 16, 1896. Jas. P. Hart, clerk.

Pl'ff's 2nd Supplemental Petition.

Filed January 16th, 1896.

In Dist. Court, Travis Co., Tex., 53 Judicial Dist.

THE STATE OF TEXAS
vs.
THE H. & T. C. R. R. Co. } No. 11915.

76 To the hon. dist. court of said district:

Now, at this time, comes The State of Texas, plaintiff in the above-styled cause, and with leave of the court files this its 2nd supplemental petition, in reply to the 1st supplemental answer of the defendant, and for said 2nd supplemental petition says:

1. That each of the several counts in defendant's said first supplemental answer is wholly insufficient; that same constitutes no ground of estoppel against plaintiff and no defense to the several matters pleaded by plaintiff, and of this it prays judgment of the court.

M. M. CRANE,
Att'y Gen'l, Attorney for the State of Texas.

Answering further, plaintiff denies all and singular the allegations in said 1st supplemental answer, and demands strict proof of same.

M. M. CRANE,
Att'y Gen'l, Att'y for Pl'ff, The State of Texas.

(Endorsed:) No. 11915. The State of Texas *vs.* The H. & T. C. R. R. Co. Plaintiff's second supplemental petition. Filed January 16, 1896. Jas. P. Hart, clerk.

Defendant's Trial Amendment.

Filed January 16th, 1896.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

In Travis County District Court, 53rd Judicial District, at Austin.

Now comes Houston & Texas Central Railroad Co., by its
77 attorneys, and, reserving and not waiving its exception to the ruling of the court in sustaining the 6th special exception contained in plaintiff's first amended supplemental petition herein, files this its trial amendment, by leave of the court, and says:

That it is unable to show the date, the denomination, or the specific purposes for which issues of the various warrants used in making the payments alleged in its first amended answer herein, further than to show that all such warrants so used by it in making said payments were of the warrants which defendant was authorized to use for that purpose under the acts approved December 16, 1863, and May 28th, 1864, and November 16, 1864, set forth at length in defendant's first amended answer herein, and that they were each and all issued to pay appropriations duly made by the legislature of the State of Texas for ordinary and lawful expenses of the government, including payment for salaries of legislative, judicial, and executive officers, and defendant is unable to specify the different acts making such appropriations and under which said warrants were issued; that defendant kept no record of the date and amount of each warrant or of the particular act under which it was issued, and although it has made diligent search and inquiry, it is unable to show such facts, further than as heretofore and hereinbefore alleged by it.

Wherefore defendant prays as in its first amended and first supplemental answers herein.

J. P. BLAIR,
BAKER, BOTTS, BAKER & LOVETT,
Attorneys for Houston & Texas Central Railroad Co.

(Endorsed:) No. 11915. The State of Texas *vs.* Houston & Texas Central R. R. Co. Defendaant's trial amendment. Filed January 16, 1896. Jas. P. Hart, clerk.

78 *Pl'ff's 3rd Supplemental Petition.*

Filed January 16th, 1896.

In District Court, Travis County, Texas, 53rd Judicial Dist.

THE STATE OF TEXAS
vs.
H. & T. C. R. R. Co.

To the hon. district court of said district:

Now, at this time, comes the plaintiff, and with leave of the court files this its third supplemental petition in reply to the trial amendment this day filed and the several pleas of which it is amendatory, and for supplement says that said trial amendment and the several pleas of which it is amendatory are each and all insufficient in this:

1. That they do not show the kind, character, date, nor amounts of each nor any of the warrants in which said pretended payments were made, nor give any other description sufficient to put the State on notice of the kind or character of proof relied upon.

2. Because no sufficient reason is given why a better description of same is not given, of all of which the plaintiff prays judgment of the court.

M. M. CRANE,
Att'y for Pl'ff, The State of Texas.

(Endorsed:) No. 11915. The State of Texas *vs.* H. & T. C. R'y Co. 3rd supplemental petition of plaintiff. Filed January 16, 1896. Jas. P. Hart, clerk.

Findings of Fact and Conclusions of Law.

Filed February 29th, 1896.

79 In District Court of Travis County, 53rd Judicial District.

THE STATE OF TEXAS
vs.
THE G., H. & S. A. R'Y Co. } # 11914.

THE STATE OF TEXAS
vs.
THE H. & T. C. R. R. Co. } # 11915.

The State instituted the above-styled suits against the railroad companies named as defendants respectively therein to recover balances amounting in the aggregate to over $900,000.00, alleged by the State to be owing by the respective railroad companies on bonds executed to the State for loans made of parts of the special school fund during the years 1857 to 1859, inclusive, under acts of the legislature of 1856.

The special school fund out of which the loans were made was created by the legislature of 1854 out of funds acquired from the United States in settlement of the boundary question between the United States in relation to the boundary between Texas and New Mexico.

The acts of 1856 authorized a loan of the special school fund to certain railroad companies, and provided for a lien to exist in favor of the State on the railroads to secure the payment of the loans, which might be enforced by the governor, who was authorized to cause a sale of a defaulting road without judicial proceedings.

The defendant railroad companies, either in their pleading or by admission made during the trial, recognized their liability for the sums sued for, unless the payments made by them in State treasury warrants in 1864 and 1865 are now to be treated as effectual payments, which they insist they must be, and the State concedes that she has no case if such payments were legal or have become binding on the State.

The objections of the State to the legality of the payments are:

80 First. That the special school fund in question was protected by the constitution of 1845 from diversion by the legislature to other than school purposes, and that a diversion was attempted when debts owing to the school fund were allowed to be paid in treasury warrants.

Second. Because the acts passed to authorize payments of these loans in treasury notes, the acts of the railroads under this legislation, and the payments made therein were in aid of the rebellion, and were, therefore, void.

Third. Because the acts in question authorizing payments in treasury warrants contemplated and attempted to aid in the use as money of treasury warrants issued to circulate as money, in violation of the State constitution forbidding the issuance of treasury warrants intended to circulate as money and of the Constitution of the United States forbidding any State to emit bills of credit.

I will take up and pass on these propositions in the order in which they are stated.

Diversion of a School Fund.

Was the acceptance of treasury warrants in payment of money loaned from the school fund an unconstitutional diversion thereof? I think not. The perpetual school fund, which the constitution of 1845 protected from diversion, was that created by setting apart not less than one-tenth of the annual revenue "derivably from taxation." As the fund which the State received from the United States Government in settlement of a boundary dispute, a part of which was by the legislature voluntarily set apart as a school fund, was not derived from taxation, the legislature was under no constitutional duty to set any part of it aside as a school fund, nor was it controlled in dealing with this fund thereafter by the constitutional restriction as to the perpetual fund. Hence the legislature had the power to repeal the act setting apart for school purposes a portion

of the fund received from the United States, or to divert the
81 fund thus set aside to the payment of the ordinary expenses of the government.

In Aid of the Rebellion.

The next question is, Were the laws passed providing for the payment of this debt in State treasury warrants and the acts of the railroad companies thereunder in aid of the rebellion, and therefore void, or were these payments made in warrants issued in aid of the rebellion, and for that reason void?

In passing upon this question there is no room for the exercise of any independent judgment as to what the course of judicial opinion since the war ought to have been upon this line of questions. The decisions of the Supreme Court of the United States, which are binding upon State courts on this subject, have settled the rules of law which must be applied to this case, and we are left to apply them to the particular cases in hand. Laws passed or contracts made in aid of the rebellion are deemed by that court to be in violation of the Constitution of the United States, and hence a controversy such as this raises a Federal question, in treating of which the decisions of the United States Supreme Court are of controlling authority. Hananer *v.* Woodruff, 15 Wall., 439.

Two general propositions on this subject are well settled.

The first one is stated by the Supreme Court of the United States in the case of Horn *v.* Lockhart, 84 U. S., 570, as follows: "The acts of the several States in their individual capacities and of their different departments of government—executive, judicial, and legislative—during the war, so long as they did not impair or tend to impair the supremacy of the national authority or the just rights of citizens under the Constitution, are in general to be treated as valid and binding."

Second. That contracts or laws made in aid of the rebellion were void and not subject to be ratified. Texas *vs.* White, 7 Wall., 700; Thomas *v.* City of Richmond, 12 Wall., 349.

82 The acts authorizing payments by the railroads in treasury warrants of their indebtedness to the school fund were as follows:

Act of December 16, 1863.

SEC. 1. The comptroller of the State be and he is hereby authorized to receive from railroad companies in this State, who are indebted to the special school fund, all interest on their bonds that may now be or hereafter become due; provided the same is tendered in State bonds, or in State treasury warrants, previous to the meeting of the next regular session of the State legislature.

SEC. 2. For all sums so paid in, the comptroller and treasurer shall issue to the special school fund the bonds of the State, bearing six per cent. interest.

Act of May 28, 1864, *Amendatory of the Last-mentioned Act.*

SEC. 1. The provisions of the act of which this is amendatory, shall not apply to railroad companies that fail or refuse to receive State bonds or State treasury warrants at par for freight or passage at the prices of rates established by law. Sections 2 and 3 provide for furnishing satisfactory evidence to the comptroller of such refusal and require the posting of notices of the terms of the act under penalty, but no provision of the law required the railroad companies to accept bonds or treasury warrants at par in payment of freight and passenger charges.

Act of November 15, 1864.

SEC. 1. The railroad companies of this State that are indebted to the special school fund shall continue to be allowed the privilege of paying the interest due said fund in the treasury warrants and bonds and coupons of the State, and may also discharge the whole or any part of the principal of their indebtedness to that fund in the same manner provided such railroad companies shall satisfy the comptroller that the treasury warrants and bonds and coupons of the State are received by them at par, with specie for freight and passenger travel.

83 Sec. 2 provided for cancellation of bonds or warrants received and issuance of State bonds to the school fund.

There is nothing on the face of these statutes indicating an unlawful purpose or effect, but while we may not hear evidence as to the motives of the legislature or look elsewhere than to the acts of the legislature itself and to the public history of the country to determine the purpose and effect of legislation, yet we are not confined to a consideration of these laws alone in passing on their meaning and effect. They deal with State bonds and warrants and express only a part of the legislative mind on those subjects. In order to determine their purpose and effect we must look to preceding legislation of which these acts are a part. It was said in Henderson *v.* Wickham, mayor, 92 U. S., 259, that "in whatever language a statute may be framed its purpose must be determined by its natural and reasonable effect."

In Texas *v.* White the United States Supreme Court construed an act of the Texas legislature repealing a law restricting the sale of United States bonds owned by the State in connection with a cotemporaneous act creating a military board, and authorizing it to sell such bonds, and from this act and the history of the times found the purpose in repealing the restrictions on sales of bonds to be to facilitate their sale to raise funds to carry on the war, and held the repealing act void. The same court in the case of Thomas *vs.* City of Richmond, 12 Wall., accepted a finding of the lower court that a law of Virginia was passed in aid of the rebellion, though the act itself expressed no such purpose; and

again in Taylor *vs.* Thomas, 22 Wall., 479, that court held a statute of Mississippi, which authorized the issuance of treasury notes in 1861, to have been passed in aid of the rebellion, though no such purpose was expressed on its face. The last-mentioned case was brought up by writ of error from the supreme court of Mississippi.

The United States Supreme Court in stating the grounds of
84 the decision of the court below, which were adopted by the United States Supreme Court, said:

"Most of the propositions submitted by the respondents were examined by the State appellate court, in all or nearly all of which the court appear to have concurred, but they finally rested the decision upon the ground that the alleged contract of the insurrectionary legislature that the treasury notes to be issued under the act in question should be received in payment of taxes was void, because the act conferring the authority to issue the notes was passed in aid of the late rebellion, and consequently that the supposed contract is not obligatory upon the State, since she returned to her allegiance and became reorganized under the Federal Constitution; that the operation and effect of that act was to give aid and comfort to the rebellion, and therefore that it was not revived by the ordinance of reorganization passed since the cessation of hostilities; that the act was a part of the financial system of the State at a time of great pecuniary want to supply not only a circulating medium for the people in the transaction of their ordinary business, but also to furnish means by which an empty treasury might be replenished; that the treasury notes issued under that act were also intended to supply an important part of the revenue by which State government was to be sustained and enabled more effectually to aid the Confederate government in the prosecution of a sanguinary war waged expressly for the purpose of subverting the Constitution of the United States. Beyond all doubt," says the court, "the finding of the appellate court of the State is correct."

In the light of these authorities, as well as upon general principles, I have no doubt but that in prosecuting the inquiry as to the purpose and effect of the statutes authorizing payments of indebtedness to the school fund in State treasury warrants I must take into consid-
eration the history of the times, the past legislative acts, and es-
85 pecially those in relation to treasury warrants and State bonds which are the subjects of the act in question. If this were not the rule, the valid enactment and enforcement of unconstitutional legislation might be easily accomplished by the adoption in separate acts of fragmentary provisions over a subject in such manner that no separate fragment of the legislation would disclose any unconstitutional purpose or effect, whereas, when viewed as a whole, a manifest violation of the constitution would appear. I shall view all the financial legislation of the State which preceded those enactments in connection with them in order to discover their effect and purpose, for, as said by the United States Supreme Court, "in whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect."

Let us look, then, to what had preceded the legislation in question.

It is useless to recite the attempted secession of the State from the Union, the ejection from their offices of the State officers who would not recognize the legality of secession, and the reorganization of the State government upon a plane of recognition of effectual secession from the Federal Union and the attempt to maintain this status by aiding what must now be accepted at least for all purposes of judicial decisions as a rebellion against the Government, Constitution, and laws of the United States. Those facts of history are fresh in the minds of all. Keeping in view this status of the *de facto* State government, let us refer to some financial legislation which had preceded the enactments in question.

In 1862 the legislature appropriated $1,000,000 for military defense (Acts '62, p. 52), another $1,000,000 in bonds was set aside for military defenses during the same year (Acts '62, p. 55), and $50,000 was appropriated as a hospital fund to take care of disabled Texans in the Confederate army, relating mainly, if not altogether, to those who might thereafter become disabled in war. In
1863 $150,000 was appropriated for the expenses of a military
86 board in order to enable them to provide for the sinking fund and interest on the war-loan bonds issued under the act of 1861, (Acts '63, p. 8); $150,000 more was appropriated as a hospital fund for the sick and wounded Texans in the Confederate army (Acts '63, p. 11). On March 5, 1863, the sum of $600,000 was appropriated for the support of the widows and families and dependencies of officers and soldiers of Texas who have been or may be in the army of the Confederate States or militia volunteer service of the State (Acts '63, p. 13).

Other appropriations for military purposes—that is, war purposes—as contradistinguished from frontier defense, in the language of legislation, amounting to over $1,500,000.00 were made.

At the same time large appropriations were made for the support of the civil government, and appropriations for large amounts made prior to the war for legitimate purposes were not met except by the issuance of warrants, which were still unpaid at and after the beginning of the war.

Millions of dollars of warrants were drawn and to be drawn against the treasury under these appropriations. The treasury was empty and warrants drawn under those appropriations would not be paid in lawful money. It was contemplated that other appropriations for support of the civil government and for carrying on the war must be made, and financial expedients had to be resorted to to make State warrants as valuable as possible, as they or State bonds were all the State could use in making payments. There was no separate financial system for appreciating the price of warrants issued for the civil service. The legislation intended to make warrants acceptable to those from whom the State would obtain services and supplies to support the civil government also comprehended enhancing the value of warrants already issued and to be issued to pay for supplies, services of men, and munitions of war in aid of the rebellion.

The act of April 18, 1861, authorized the borrowing of money to pay debts created by the secession convention.

87 Three acts were passed January 11, 1862, one to provide for the receipt of treasury warrants not bearing interest and Confederate notes for all public dues, with two exceptions. The second required the treasurer and all State and county officers to disburse treasury warrants and Confederate notes as money, and the third authorized the issuance and sale of State bonds and the application of such bonds or the proceeds thereof to the payment of indebtedness theretofore incurred by the State for civil and war purposes and to the payment of future indebtedness that might be incurred in support of the civil government or for the military defense of the State government. This act was amendatory of certain sections of the act of April 8, 1861, authorizing the issuance and sale of bonds.

By another act of January 13, 1862, it was provided that any indebtedness of the State to the special funds should be substituted as far as practicable by "loan bonds," as the bonds above mentioned were termed.

On December 10, 1863, an act was passed providing for the borrowing of two millions of dollars, or so much thereof as might be necessary, upon bonds payable in cotton, expressly referring to the war, and stating the purpose to be to raise funds for defense of the State in that war.

On May 28, 1864, the same day on which the act was passed limiting the right to pay interest on school fund indebtedness in treasury warrants to those railroads who would accept treasury warrants and State bonds at par for carrying services, the legislature passed an act to provide for the liquidation of debts incurred in support of the civil department, and to liquidate appropriations which have been made or may be made by the Tenth Legislature for the support "of families and other dependents of Texas officers and soldiers in military service of the State and

88 of the Confederate States of America." Now, however commendable provision for the support of destitute families of soldiers may have been, and no difference how much such provisions may appeal to our sympathies, it cannot be doubted that this was as much in aid of the rebellion as was the furnishing of supplies to the soldiers themselves. The same may be said of appropriations for hospitals at an earlier date.

The foregoing sketch of some of the legislation leading up to the passage of the act of December 16, 1863, and of May 28th, 1864, and November 10, 1864, authorizing the payment of the debt owing to the school fund by the railroad companies in State treasury warrants, will be sufficient to show how the latter acts and the action taken under them operated in aid of the rebellion. These acts were simply a part of a financial scheme to enhance the value of State warrants so as to enable the State not only to support the civil government, which it might lawfully do, but to utilize its State warrants to purchase and pay for supplies and munitions of war; and not only do these acts include the double purpose of supplying the

civil government and supporting the rebellion, but the contract which each railroad entered into to receive State treasury warrants, whether issued for civil or military purposes at par in payment of freight and passenger charges, was a contract made in aid of the rebellion. Thus by making such contracts they became direct supporters of the financial scheme of the government to provide for the purchasing of arms and munitions of war.

The railroad companies were voluntarily parties to this financial plan. They were not bound to pay anything on their indebtedness to the school fund after January 11, 1862, until six months after the close of the war. On that day the legislature passed an act relieving them from such payments until six months after the close of the war. And while they would probably have received a large number of treasury warrants in payment of freight and passenger fares
89 for want of other currency in the hands of the people with which to pay for such services without any contract with the State, yet they would not have received them at par, but at their depreciated value, and their agreement to receive them at par, in order to be able to make payments with them on their indebtedness to the State, was not forced on them. The statute prescribed a penalty for failure to post notices of its terms, but did not require acceptance of treasury notes, except as a condition of paying them on the roads' indebtedness, and the penalty for failure to post its terms was imposed simply to cause notice to be brought to the comptroller of their refusal, if they did refuse, to take the State's paper at par, so that the comptroller might refuse to allow them to make payments in treasury warrants on their indebtedness to the school fund.

The voluntary contractual relations thus assumed by the railroad companies with the State to aid in appreciating the value, not only of warrants issued for civil service, but of warrants issued and to be issued in support of the rebellion, was illegal, and no right to pay in any kind of warrants which were acquired under such contracts existed, nor were payments made in such warrants effectual as payments for any purpose.

Similar questions to the one now under consideration have come before the courts of last resort of the Southern States since the war. As late as 1887 the validity of treasury warrants issued by the State of Arkansas under an ordinance entitled "An ordinance to provide revenue for the State of Arkansas" came up for decision. It was contended in that case in support of the warrants that nothing appeared in the act to suggest that warrants issued under that ordinance were for illegal purposes. The court in reply to this contention said: "But can the treasury warrants be separated from the war bonds so far as their receivability for future taxes is concerned? Are not both parts of one general scheme? These interrogatories were answered in the affirmative, and the warrants were held to be void." Bragg *vs.* Tuffts, 49 Ark.,
90 554.

The supreme court of Mississippi passed on an act of the legislature of that State passed December 9, 1863, authorizing the payment in treasury warrants of all the indebtedness owing by railroads

to the school fund of that State, which fund there, as here, had been loaned to railroad companies prior to the war. There, as here, the validity of the act authorizing such payments come in question in a suit for the debt wherein the payments were disregarded as void. There was nothing on the face of the act indicating an unlawful purpose, but the court said:

"It must be assumed as a truth which enforced itself upon the understanding that there must have been some extraordinary motive that induced the legislature of 1863 to invite the railroad companies to pay into the treasury this large indebtedness (loaned in coin or its equivalent) in a currency then depreciated 400, 500, or 600 per cent. below coin standard." A history of legislation and appropriations to carry on the war is then recited by the court, and from these facts and the history of the times the inference is drawn that this act was passed in aid of the rebellion and the payments in treasury warrants were disallowed without any effort to inquire whether some of them may not have been issued for lawful purposes. N. O., etc., Co. *v.* The State, 52 Miss., 877.

Another decision by the Supreme Court of the United States in point is the case of Hananer *v.* Doane, 12 Wall., 342. The court, speaking of those who become the holders of due bills, knowing that they had been issued by a contractor for supplies received by him, to be furnished to the Confederate army, said: "They became the holders of due bills, knowing for what purpose and on what consideration they had been issued, and hence their title was no better than — of the original holders. To vitiate this title it was not necessary, as stated by the judge, that Hunter & Oates should have been interested in furnishing the supplies for which the due bills were given, nor that what they did should have been done
91 with the view of aiding the rebel cause."

The analogy between that case and the one at bar is sufficiently close to make the application of the principles there announced to these cases apparent. Here the railroad companies contract with the hostile government to take at par, among other evidences of indebtedness, treasury warrants issued for aid furnished by others to the carrying on of the rebellion. The contract is made in consideration of the agreement by the State, through a legislative act, to redeem the treasury warrants by cancelling indebtedness owed by the railroad companies to the State on delivery of the warrants taken at par by the railroad companies. The contract is carried out and the benefit of it is claimed in these cases.

In another case what seems to be the very question here involved was decided adversely to the defendant's contention. The case referred to is Taylor *v.* Thomas, 89 U. S., 479, from which I have before quoted. In that case it appeared that the State of Mississippi on December 19, 1861, passed an act authorizing the issuance of treasury notes to the amount of $5,000,000, to be paid out of the treasury of the State as advances to the people of the State upon cotton. The State was to receive the cotton, have a lien upon it, sell it to pay the advances, and place the money received for the cotton in the State treasury in payment of the ad-

vances made in treasury notes. In consideration of the people accepting the treasury notes for cotton, it was enacted that the treasury notes so issued should be receivable in payment of all dues to the State. Taylor had delivered cotton to the State, and obtained the treasury notes therefor, which at a later period he tendered in payment of taxes. The collector refused to accept the notes and was proceeding to enforce the payment of the taxes of Taylor in lawful money when Taylor sued for an injunction upon the ground that a contract existed between him and the State requiring the State to so receive treasury notes in payment of taxes, the obligation
92 of which was impaired by subsequent legislation seeking to deny him the right to use such treasury warrants in payment of taxes. It was contended by counsel for Taylor that the act under which the cotton notes were issued was an act of ordinary legislation, having no reference whatever to the rebellion. But the United States Supreme Court looked beyond the face of the act to the fact that the act, while aiding the civil government, also furnished means with which to carry on the war, and held the act and the contract of the State with Taylor to receive the treasury notes void.

It is impossible to render valid void contracts and enactments in aid of the rebellion by so blending them with legal contracts and valid laws as to render it impossible to eliminate the illegal from the legal parts. The result of such confusion of illegal with legal purposes and effects, according to well-recognized rules, is to render the whole void. It was so held in the case of Hananer *v.* Doane, quoted from. There a part of the consideration for the notes sued on was legal, but a part was illegal, and the court said, "If either of these portions of the consideration on which the notes were given was illegal, the notes are void in toto. Such is the elementary rule for which it is unnecessary to cite authorities." A part of the treasury warrants which the railroads agreed to take at par in consideration of the State receiving them in payment of debts owing by the railroads to the State were legal, but a part of such consideration was illegal, and as that which was legal cannot be separated from that which was illegal, the whole contract falls to the ground.

And the railroads acquired no right to pay in any kind of warrants which may have been received as the fruit of this unlawful contract, whether some of the warrants thus received may have been issued for legal purposes or not, and the State officials had no power to bind the State by accepting payments sought to be made under such unlawful contract. The contract undoubtedly obli-
93 gated the railroad companies to receive all warrants offered them, including those issued directly in aid of the war.

There is a clear distinction between the class of cases which deal with transactions between individuals involving the use of Confederate money or State treasury warrants, concerning which several authorities have been invoked by defendants, and contracts and transactions with a hostile State. The indirect benefit which the State or the Confederate government received in the way of appreciation of government paper by individuals treating it as money in

their ordinary business transactions did not render private contracts respecting such paper void. Such contracts were upheld because made through necessity amounting to force, but the question is quite different when one voluntarily deals with the hostile government in such manner as to aid it in the rebellion or when a State passes a legislative act with a view to aiding it to assist the Confederacy in carrying on the rebellion. The former class of contracts are valid, but the latter class of contracts and statutes were void and have been uniformly decided by the courts to be void.

It will be seen from the foregoing authorities and the line of reasoning which they support that it must be held that the acts attempting to authorize the payments in question were void in so far as they applied to warrants issued in aid of the rebellion, and that as the aid they were intended to give to warrants generally was made to operate in aid of warrants issued in support of the rebellion by reason of the general connected and inseverable financial scheme of which they were a part, the acts are void in toto and did not confer any authority upon the State officers to receive payments in treasury warrants on the debt owing by the railroad companies to the school fund.

It must also be held, as I have indicated, that because the railroad companies acquired them under a contract to take them at par in aid of the rebellion they did not acquire any right to make
94 effectual legal payments to the State with them, even if they might have so used them if they had acquired them in the ordinary course of business without any contract with the hostile State in relation thereto.

But if we assume that the statutes in question, though void as to warrants issued for military purposes connected with the war, were valid as to warrants issued for civil purposes, what must be the disposition of the payments in question? The defendant railroad companies take the position that if they might have paid in legal warrants the presumption is that they did pay in legal warrants, and that the burden of proof is upon the State to show that the payments were made in illegal warrants. I do not think this position tenable for several reasons. In the first place, the rule is that when one pleads payments in something other than money it devolves on him to plead, describe, and prove the very kind of paper or articles in which he paid. If the defendants had discharged this burden they would have shown, in making out their case, the very warrants in which they paid, and their legality or illegality would have been apparent without proof on the part of the State when the laws of which the court must take judicial notice were applied to the case. But the defendants have simply pleaded and proved that they made payments in treasury warrants, and they are unable to prove and the State is unable to prove what kind of warrants were used in such payments. The warrants were received by the railroad companies as money indiscriminately and were received by the State officials in the same manner, and no record was taken or kept of the various classes of warrants that might have been used. It is not probable that the ability of either the State or the railroads

to produce evidence as to the class of warrants in which payments were made has been effected by the lapse of time or death of former officials. Probably neither party could have remembered an hour after a payment, if they ever knew, the act class of warrants in
95 which they were made, any more than a man making or receiving a large payment in paper currency now would remember what part of it was paid in the different kinds of paper money now in circulation.

It is certain that there were a large number of warrants issued directly in aid of the rebellion which they received at par under the State laws in order to be able to pay their debts to the State in State warrants at all, and it appears just as probable that they made the payments in part in that class of warrants as in others. If we were not bound to take notice of the fact that they must have had illegal warrants with which they might have paid, the case would not be so strong for the State. But under the facts they should be held to prove not only that they paid in some kind of State warrants, but there being both legal and illegal State warrants, it devolved on them to prove what kind of warrants they paid in, so that the court might see whether they were legal or illegal warrants.

For another reason the burden of proof is upon the defendants on this question. This is not a suit by the State to set aside payments, as defendants contend. Payments accepted through mistake or imposed through fraud might not be void but merely voidable and binding until set aside, and a party to be relieved from them would have to assume the burden of proving the avoiding facts. But void payments do not have to be set aside; they may be ignored. The State, in this case, ignores the payments in question as void, and the defendants are forced to plead and try to sustain them. Not only this, but the defendants are asking equitable relief to set aside the application of payments heretofore made. They have repaid to the State, under protest, the amount of the payments made in treasury warrants, and, without a change in the application made of the payments, what they owe now is on the remaining part of the debt which is incontestible. They must, therefore, seek to set aside the application of payments hereto-
96 fore made, and to have those payments applied to the balance of their respective debts remaining, after considering the payments in treasury warrants as valid. In their pleadings they allege that this requirement of payments upon the basis of ignoring payments made in treasury warrants was illegal, and that they assented to the application which was made of their payments only under protest, and pray for a re-application of payments. In other words, they have to resort to a cross-action to set aside the application heretofore made of payments. Then they have the burden of proving that the first payments made in treasury warrants were legal in order to show the exaction of a second payment of the amounts paid in treasury warrants was unauthorized.

But the defendants say the presumption in favor of the regularity of official acts requires us to presume that officials charged with receiving these payments received none but legal warrants. The

presumption of the regularity of official acts proceeds upon the assumption that executive officers regard all legislative acts passed in due form as constitutional until decided by the judicial department to be unconstitutional. The presumption, therefore, is that in 1864 the executive officers of the government regarded the statutes authorizing payments to be made in any kind of treasury warrants as valid, and that therefore they did not discriminate in receiving such warrants, so as to reject what are now classed as illegal because issued in aid of the rebellion. That is not only a presumption, but history proves it to be a fact. The court must take judicial notice of the historic facts that in 1864 the offices of this State were occupied by men who believed the State had legally seceded from the Federal Union and who acted on the assumption that no laws in aid of the war were void, as being against the laws of a government with which they believed they had severed their connection and to which they believed they no longer owed any allegiance or duty.

97 They did not think of acts in aid of the rebellion, for to their minds there was no rebellion, but a lawful secession from the Union. To their minds acts in aid of the war were acts in defense of one's country against a war of conquest waged by alien enemies. They not only did not seek to avoid such official acts as would aid in the war, but each with his whole heart and soul did everything, in an official way, that he could do to make successful what he regarded as a war of defense of his country, and such would it have been held, for all legal purposes in this State, if it had been successful. The presumption contended for by defendants, though supported by general propositions of law, is in this case overcome not only by the presumption that those organizing a government in hostility to the United States and outside of the Union, as they believed, would not hold legislation of their State unconstitutional because it might be hostile to the Constitution and Government of the United States, but the facts of history do not leave the question open to presumption. The court judicially knows that they generally treated warrants issued in aid of the rebellion as valid. Presumptions of fact cannot be indulged in against the public history of the country proving the contrary.

It is safe to assume that if the men who received for the State the payments in question were now living they would regard it as an imputation of treason to ask them to testify that they attempted to discriminate against warrants issued in aid of the Southern Confederacy. Nearly all of the participants in behalf of the South yet deny that there was a rebellion, and maintain the opinion that there was a justifiable legal secession from the Union. The question must forever remain open, in the forum of independent individual opinion, whether that position was correct, and it is no purpose of mine to give a personal opinion that the view maintained by the South was or was not erroneous. For all purposes of judicial decisions the question has long since been concluded against the views of the South, and I am not at liberty to depart from the judicial decisions on that subject while passing on the question as

a court, nor do I seek to evade the full logical consequences
98 of the prevailing course of judicial opinion on this subject.

I hold that the alleged payments in State treasury warrants were ineffectual for any purpose for the reasons which I have given.

Treasury Warrants to Circulate as Money.

Bills of credit.

The next objection to the payments in treasury warrants is that the acts authorizing such payments were void because they attempted to aid in giving effect to legislation providing for the issuance of treasury warrants to circulate as money in violation of the State constitution forbidding the issuance of treasury warrants for such purposes, and in violation of the Constitution of the United States, which forbids any State to emit "bills of credit."

In the case of Craig *v.* The State of Missouri, 4 Peters, 410, the Supreme Court of the United States, speaking through Chief Justice Marshall, defined bills of credit as follows:

"The term has acquired an appropriate meaning, and 'bills of credit' signify a paper medium intended to circulate between individuals and between government and individuals for the ordinary purposes of society."

In another part of the opinion the court, in commenting upon the evidences that the certificates which the State of Missouri issued bore of bills of credit, said: "It seems impossible to doubt the intention of the legislature in passing this act or to mistake the character of those certificates or the office they were to perform. The denominations of the bills—from ten dollars to fifty cents—fitted them for the purpose of ordinary circulation, and their reception in payment of taxes and debts to the government and to corporations, and of salaries and fees, would given them currency. They were to be put into circulation—that is, emitted by the government."

Let us apply to the legislative acts under consideration
99 this definition and reasoning as well as the prohibition in the State constitution against the issuance of treasury warrants to circulate as money.

The act of February 14, 1860, which provid*ing* for treasury warrants to bear interest, and that they should "not circulate as money," but might be assigned, was expressly repealed January 10, 1862, by an act which provided for funding interest-bearing warrants in non-interest-bearing warrants, and for dividing up the amount of the interest-bearing warrants or other claims into new warrants of such denominations as the person to whom they were issued might desire, with the proviso that "not more than one-tenth of the whole amount may be issued in warrants for one dollar each, and the balance in warrants for five dollars or more each." Prior to the passage of this act an act had been passed requiring the receiving by the comptroller of treasury warrants "for money" in settlement with any individual indebted to the State for lands under the different pre-emp-

tion laws or laws authorizing the sale of university lands, or laws providing for the sale of public domain.

On January 11, 1862, an act was passed which expressly provided that non-interest-bearing treasury warrants shall be receivable as money in the payment of office fees, including fees for patents and land dues payable in the general land office, taxes, and all other dues to be collected for the State or in its name, except specific taxes for the objects of paying interest and principal of loans, and except dues of sinking fund and interest on school funds loaned to railroad companies. On the same day another act was passed providing "that the treasurer and every other officer of the State and every officer of counties who, according to law, shall have received as public money treasury warrants of this State, or treasury notes of the Confederate States of America, or its coupons shall disburse or transfer the same as money at par, according to the laws providing
100 for disbursement or transfer of money in the respective cases" where they would be received as money, "except that treasury warrants of the State received by the treasurer thereof shall not be reissued." After this come the acts in question, authorizing the payment of the school fund in treasury warrants in which the State provided for a bargain with railroad companies to receive treasury warrants at par in payment of charges for carrying services rendered individuals as well as the State. It requires no argument to show that it was the purpose of this legislation to cause treasury warrants to circulate as money, and public history informs us they did circulate as money.

The defendants insist that the treasury notes were not "bills of credit," which a State is forbidden to issue, and cites the case of Poindexter *vs.* Greenhow, 114 U. S., 270, where the Supreme Court of the United States held that coupon bonds of the State of Virginia were not to be classed as bills of credit because they were made receivable for taxes; but that case is not in point. The court there held that the coupons were not intended to circulate as money and find the evidences of a lack of such intention, among which the court mentions a conclusive circumstance in the following language: "They do not become receivable in payment of taxes till they are due, and the design, we are bound to presume, was that they would be paid at maturity. This necessarily excludes the idea that they were intended for circulation at all." The treasury warrants we are considering were due when issued and were receivable for public dues and were to be disbursed as money by all public officers after they were so received unless they were paid into the State treasury. The language of the statutes speak- of their being used as money, and leave- no chance for doubt on that subject. The acts providing for their use in payment of indebtedness to the school fund contemplate their circulation as money, and that they will in the ordinary course of business be tendered to the railroad companies to
101 pay for carrying services, and looks to maintaining them as money by making provision for their being accepted at par. Counsel for defendants take the position that if warrants are issued by the State against appropriations to pay debts incurred by the

State they cannot be bills of credit or be issued in violation of the State constitution forbidding their issue to be circulated as money. I cannot concur in this view. If any State should embark in the issuance of bills of credit or warrants intended to circulate as money, its only expedient means of getting them out into circulation would be by passing them in payment of expenses incurred by the State.

As the treasury warrants used in making the contested payments were issued in violation of the State constitution and of the Constitution of the United States forbidding the issuance of treasury warrants to circulate as money or were endowed with such unconstitutional function after they were issued, the acts of the legislature attempting to authorize their use as money by providing for contracting with railroad companies to receive them as money at par and authorizing them to pay their debts to the State with them as money were void because intended to aid in circulating such papers as money. These acts were therefore ineffectual to authorize the payments in question.

The same construction ought to be given to the scope of those constitutional provisions as that given by the Supreme Court of the United States to a law of the State of Tennessee forbidding private banks issuing any bills or notes for the purpose of putting into operation any banking institution, association, or concern. The court said:

"We must construe the act, therefore, as covering with its penal prohibition the whole range of devices by which illegitimate currency is imposed on the community. It prohibits the use of such currency during the whole period of the establishment of an
102 illegal company, and applied as completely to the last as to the first step of its operations. Any other construction would frustrate the legislative intent and leave the great mischief which the statute was made to prevent wholly without restraint or check." Davidson *v.* Lanier, 4 Wall., 447.

If valid payments may be made to the State in paper issued unlawfully as money, then effect will be given to the unlawful issue, and the prohibitions of the State and United States Constitutions would be of no avail.

Although payments made by one citizen to another in such unlawful paper, made under the coercion of war, which deprived the people of all other circulating mediums, are held valid when accepted, yet a different rule must be applied to payments to the State which issues the paper and makes its claims payable in it as a direct and intended means of inducing it to circulate as money. Payments to the State must be treated as void, or there would be no means of stopping the circulation of such paper as money, and the constitutions would be imperative.

The proposition of defendant, based upon the concession, for the purposes of their argument, that the payments may have been illegal when made, but have become binding on the State, first, because the transaction is fully executed, and the State, being *in pari delicto*, cannot reopen it; second, because the State is estopped by its con-

duct, and because it has acquiesced a long while in what was done and been guilty of laches; third, because it has recognized and affirmed the payments by the legislation of 1870, may each and all be answered with the proposition that if the act of 1864, authorizing the payments, were unconstitutional and void for the reasons that they were passed in aid of the rebellion or to assist the State in emitting bills of credit or circulating treasury warrants as
103 money, any act of the subsequent State legislature or State officers, under the same or even more stringent constitutional restrictions, which looked to their being given effect by conduct of State officials or by direct sanction of the legislature, would also be void and of no binding force upon the State. Such acts would not be the acts of the State, but lawless acts of a State government. When State officers have no power to directly bind the State by their acts, they cannot do so indirectly; and while the State only acts by agents and may be bound indirectly under the doctrine of estoppel by the acts of its agents who have power to bind the State directly, yet when State officers act outside of their constitutional authority their acts are in no sense the acts of the State and cannot be so treated for the purposes of affecting the rights of the State in court. This is no more than an application of the elementary rules of agency to the question, for if one appoints an agent and delegates to him certain powers and the agent exceeds those powers, every one will agree that the unauthorized acts of the agent do not bind the principal; and while the principal may in person adopt and ratify the unauthorized acts of this agent or appoint other agents with powers extensive enough to cover ratification of *piror* unauthorized acts and become bound by a ratification of such acts, yet no subsequent agent with no more power than the former agent who was guilty of the unauthorized acts could any more make the act binding on the principal by attempting to ratify it in the name of the principal than the first agent could bind the principal by the unauthorized act in the first instance.

The Supreme Court of the United States expresses this proposition in the following language in the case of Poindexter *v.* Greenhow, 114 U. S., 270: "The State itself is an ideal person, intangible, invisible, immutable. The government is an agent, and within the sphere of the agency a perfect representative, but outside of that it is a lawless usurpation. The constitution of the State is the limit of the authority of its government, and both government and State are sub-
104 ject to the supremacy of the Constitution of the United States and the laws made in pursuance thereof."

Hence, when defendants say the State was *in pari delicto* we must answer that it was only State officers acting outside of their power to represent the State that were *in pari delicto* and not the State, nor was there any executed contract or transaction which the State now seeks to set aside. The contract and transactions were void and nothing was executed by them. There were no payments in contemplation of law and no acceptance of payments by the State. The only executed matter which is sought to be set aside is the application of the payments made by the railroad companies since the

war, which were applied to payment of the amount the roads claimed had been before validly paid in treasury warrants, and the effort to set aside this executed matter is by the defendants, who seek to apply those payments differently.

The only legislation of 1870 which, according to my construction of the acts, sought to ratify the payments made in treasury warrants was the special act for the relief of the H. & T. C. R'y Co. of August 15, 1870, which the journals of both houses show was passed over the veto of Governor Davis, and for the reason just given it cannot be given such effect. The acts extending the time of payment of the indebtedness to the railroads passed in 1870 provided for payments of interest and sinking fund "on the aggregate amount due on account of said loans, principal and interest, as said aggregate amount stood on the first day of May, A. D. 1870." I do not think this language imports a recognition of any particular status of accounts in 1870. Some time had to be stated up to which interest should be computed and become a part of the principal upon which interest and sinking fund would thereafter be paid, and the first day of May was adopted as the time to which interest should be computed. But if a contrary construction of this legislation is to be adopted, it must be assumed that the accounts were restated and the railroads recharged with the payments made
105 in treasury warrants on May 1, 1870, as that is the date of the entries on the books, and as there is no other evidence of the date of restating these accounts. Hence the acts mentioned may have referred to the condition of the accounts after they were restated.

Finally, if it was sought by the acts to give effect to the payments made in treasury notes, they cannot be given that effect for constitutional reasons, which I have already stated.

But it would not follow that the consolidation acts of 1870 were void for all purposes if they attempted to ratify the void payments in question. They consisted mainly of grants of privileges to the railroads, which it may fairly be assumed they would have accepted without such supposed ratification of payments claimed by them to have been made. It is true the acts also involve the assumption by the consolidated company of the indebtedness to the school fund owed by railroads entering into the consolidation. But as the security of the State, we must presume, was ample at that time without new property being brought under its lien, and as the consolidated corporation acquired thereby property of greater value than the indebtedness assumed, it is not to be presumed that they would have refused to accept the extension of time for payment of the debts and the privilege of consolidation because the attempted ratification of void payments could not be carried out.

But if the whole of the consolidating acts were held void, the State's right of recovery would not be effected if limited to be satisfied from a sale to be made of those parts of the road on which the State's lien originally existed. It is admitted by defendants that they have those roads in possession and that those roads have in fact been transferred to them by the former owners, and of course

under the law under which the loans were made they took the part of the road on which the loans were made subject to the liens.

106 Another serious question arises, which has not been argued on the trial, as to the right of defendants to maintain their defense, calling for setting aside the application of payments made by them under protest to cover the payments before made in treasury warrants and the making of another application thereof. There is no proof that the governor was threatening to sell out defendants' roads instead of bringing suit, as was ultimately done, to enforce payments claimed by the State to be owing it. The protests filed with the comptroller, asserting threats of immediate seizure and sale by the governor, are not evidence of the facts which they recite, but are only evidence that the defendants allege those statements to be facts and made the alleged facts reasons for payments under protest. The mere payment under protest does not entitle one to recover money unnecessarily paid, nor will the desire to avoid a suit at the time of the payment to test his rights in court be sufficient reason to authorize a recovery of money thus paid under protest. I apprehend the same rule applies to an effort to set aside an application of payments made on one part of a debt under protest, for it is a general rule that when an application of a payment is once made, even if on an illegal claim, the application is conclusive unless fraud, mutual mistake, or duress can be shown. American & English Ency. Law, p. 243, 244, note 1.

Furthermore, it is probable that the governor in the capacity of a trustee, if not in the exercise of his constitutional executive functions, was subject to be prevented by injunction from selling the railroad, if the payments in treasury notes were valid, and, if so, there was ample time and opportunity during the advertisement of the sale to seek this remedy before paying under protest. Where a party has time and opportunity to maintain his rights by taking the offensive or by making a defense in court he cannot pay money in dispute under protest and seek a readjustment afterwards. This is only justified when immediate injury is threatened against which no relief can be had in court until too late.

107 A suit for an injunction to prevent a State officer from doing an injury which he is not authorized by the State to do is not a suit against a State and may be granted when the same officer could not be compelled by mandamus to perform an official duty. Kaufman Co. *v.* McGaughey, ct. civ. app.; Osburne *v.* Bank of U. S., 9 Wheat., 738; Poindexter *v.* Greenhow, 114 U. S., 270.

But as these questions, though arising in the case, were not suggested or argued by counsel, and as I have not thought it necessary to examine into them carefully, owing to the disposition of the case which I had decided to make on the other questions in the case, I will not rest the decision in whole or in part on the last questions mentioned.

Taking the amounts due when the respective railroads defaulted in payments of installments provided for under the act of August 13, 1870, and considering the defaults in payments as abrogating the

installment plan of payment therein provided for and as causing the total amount then owing, principal and interest, to become due, and calculating interest thereon at the rate of 6 per cent. per annum from that date, I find that the Galveston, Harrisburg & San Antonio Railway Company owes the State $447,567.58, and that the Houston & Texas Central Railroad Company owes the State $203,502.71 on account of loans made by the State to the Washington County Railroad Company and $469,606.85 on account of loans made by the State to the Houston & Texas Central Railway Company, making the aggregate amount owing by the Houston & Texas Central Railroad Company $673,109.56.

Judgment will be rendered in the respective cases accordingly for the State and for foreclosure of liens, as prayed for, for the benefit of the permanent school fund, of which the debts owing by the railroad companies became a part under the constitution of 1869 and has continued to be a part thereof by constitutional provisions ever since.

F. G. MORRIS,
District Judge, Presiding.

108 (Endorsed:) 11914. The State of Texas *vs.* G., H. & S. A. R'y Co. 11915. The State of Texas *vs.* H. & T. C. R. R. Co. Findings of fact and conclusions of law. Filed February 29, 1896. Jas. P. Hart, clerk.

Substituted Findings of Fact and Conclusions of Law.

Filed March 23rd, 1896.

In District Court of Travis Co., 53rd Judicial Dist.

THE STATE OF TEXAS
vs.
THE H. & T. C. R. R. Co. } No. 11915.

The following conclusions of law and fact by the court will be filed in lieu of the lengthy opinion filed in the case, not with the purpose of changing the conclusions therein expressed, but to condense the same, so as to render the sending up of the opinion in the record unnecessary.

Conclusions of Fact.

1. I conclude that all the allegations of fact contained in plaintiff's original petition are true as therein stated.

2. I conclude that the defendant and the corporation whose rights passed to defendant paid in money the payments which defendant pleads were paid in money on the indebtedness sued on, and that the payments in treasury warrants pleaded by defendant were made in State treasury warrants on the dates set out in defendant's answer, and were accepted by the State officers to whom the payments were made as valid payments.

3. I find that it has not been proved whether the warrants actually used in making the payments were warrants issued for indebtedness incurred prior to the civil war or warrants issued
109 for State indebtedness incurred after the war began, or if of the latter class whether they were warrants issued for military purposes or for civil indebtedness, but from the circumstantial evidence I conclude that neither the railroad company nor the State discriminated as to the class of warrants the railroads received for carrying services or paid on their indebtedness, and that some of all kinds were used in making the payments.

4. I find that said payments in treasury warrants were charged off the account, and the account of the State with the defendant railroad company was restated May 1, 1870, so as to ignore said payments in treasury warrants.

5. It is not proved that the governor was threatening to sell the railroad owned by defendant to force the repayment of the payments made in treasury warrants or whether he would have resorted to a suit to enforce such payments.

In reaching the foregoing conclusions of fact I have excluded from my consideration the statements made in official reports and governors' messages to the legislature, having concluded that defendant's objections that the statements contained in these papers were not admissible as evidence proving or tending to prove the facts therein stated. I have also eliminated from consideration certain other evidence, as shown by explanations attached to defendant's bills of exception.

Conclusions of Law.

1. I conclude that the special school fund loaned to the railroad companies was not controlled by the constitutional provisions in relation to the perpetual school fund contained in the constitution in force when the acts were passed authorizing the payment in State treasury warrants of the indebtedness of the railroad companies to the school fund.

2. I conclude that the acts of the legislature during the civil war authorizing the payment of the indebtedness of the rail-
110 road companies to the school fund in State treasury warrants were passed in aid of the rebellion as well as of the civil State government and were void, and that without these acts there was no authority for the railroad companies making payments of their indebtedness to the school fund in anything other than money nor were the State officers authorized by law to receive payments on said indebtedness in anything but money.

3. I conclude that the acts authorizing the payments in question in treasury warrants were passed in aid of legislation intended to cause State treasury warrants to be issued to circulate as money and with a view to stimulating their circulation as money by adding to the uses which should be made of warrants issued to circulate as money and by bargaining with railroad companies to receive such

warrants at par for freight and passenger services to be rendered to the people and the State.

4. I conclude that the contract made by the railroad companies to receive such warrants at par in order to be able to use them in making payments on their indebtedness to the school fund was a contract made in aid of the rebellion, as it included warrants issued for war purposes as well as for the purpose of civil government, and that such contract was further illegal because made to support the circulation of treasury warrants issued to circulate as money in violation of the State constitution and of the Constitution of the United States, and that therefore the railroad company acquired no right under said contract to use treasury warrants in payment of their indebtedness to the State, nor did the State officers have authority to accept such payments, and they were void.

5. If the legislation referred to was not void because in aid of the unlawful circulation of treasury notes as money and was only void because in aid of the rebellion as to warrants issued in aid of the rebellion, then I hold that the presumption is, and the
111 historical facts show the facts to be, that the officers then exercising the governmental functions respected all acts in aid of the rebellion as legal, as they maintained they were out of the Union, and no presumption can arise that they accepted in such payments only such warrants as were issued in aid of the civil government before or after the war commenced.

6. The burden of proof was upon the defendant to plead and prove the payments relied upon, and when the defendant pleaded a payment in something other than money it devolved on the defendant to plead and describe the very things in which it made payments, so that the court might determine whether the defendant showed *prima facie* a valid payment, and this burden has not been discharged so as to enable the court to decide what was used in making the payments. If this burden had been discharged, the court could have determined from the case made by defendant and the laws of which the court must take judicial notice whether the payments were valid without pleading or proof on the part of the State of additional facts.

7. The issues presented by defendant, arising, as they do, out of an effort to obtain affirmative relief in the nature of a decree setting aside the application of repayments of the amount paid in treasury warrants, imposed the burden of proof on defendant to show that the original payments made in treasury warrants were legal in order to show that the repayments thereof made under protest were unlawfully demanded.

8. I find that it is not the State but State officers acting outside of their authority to represent the State who are *in pari delicto* and who have ratified what has been done if any ratification has taken place.

9. I hold that the payments in question did not constitute an executed matter. Nothing was executed or accomplished by said payments, as they were void and did not amount to payments in

law; neither were they received as payments by the State.
112 They were unlawfully received by State officers, who did not and could not represent or bind the State in this matter.

10. The legislature had no power in 1870 to validate said alleged payments and did not validate them.

11. By the terms of the act of 1870, extending the time for the payment by the railroad companies of their indebtedness to the school fund and providing for the payment of the same by installment, upon default for ten days in making any payment therein provided for, the whole of the principal and interest became due, and I have calculated the interest accordingly and not upon each installment which would have become due if the contract of extension had been complied with by defendant; and, thus calculating the interest, I find the defendant owes the State the amount for which judgment has been rendered.

To which conclusions of law and fact counsel for defendant in open court except.

F. G. MORRIS,
District Judge.

(Endorsed:) No. 11915. The State of Texas *vs.* The H. & T. C. R. R. Co. Substituted findings of fact and conclusions of law. Filed March 23, 1896. Jas. P. Hart, clerk.

Judgment, February 29th, 1896.

FEBRUARY 29TH, 1896.

THE STATE OF TEXAS
vs.
THE H. & T. C. R. R. Co. } 11915.

The above-styled cause coming on to be heard, both par-
113 ties appeared by their attorneys and announced ready for trial, but, no jury being demanded, all questions of fact as well as of law were submitted to the court.

Then came on to be heard the defendant's demurrer to plaintiff's supplemental petition, and, after hearing the same, the court considered that they ought all be overruled, which was accordingly done; to which ruling the defendant then and there excepted.

Then came on to be heard plaintiff's exceptions to the defendant's supplemental answer. The court is of the opinion that the law is against said demurrers, and they are accordingly overruled; to which ruling plaintiff excepted.

The court then, after hearing the evidence and argument of counsel, considered that all of the material allegations in plaintiff's original petition had been fully proved.

It is therefore ordered, adjudged, and decreed by the court that the plaintiff, The State of Texas, do have and recover of and from the Houston & Texas Central Railroad Company the sum of ($673,109.56) six hundred seventy-three thousand one hundred and nine and

$\frac{56}{100}$ dollars (the same being the amount of principal and interest now due), together with all costs of suit.

It being made to appear to the court that the said indebtedness was secured by a lien upon all of defendant's railroad property as described in said plaintiff's original petition—

It is therefore ordered, adjudged, and decreed by the court that the said lien be, and the same is hereby, foreclosed on all of its line of railroad, as described in said petition—that is to say, on its line of railroad beginning at the original terminus of said road on the left bank of Bauffalo bayou, in the city of Houston, in Harris county, Texas, and running thence in a general northwesterly direction through the counties of Harris, Waller, Grimes, Brazos, Robertson, Falls, and Limestone, to a point about three miles south of
114 Kosse, in Limestone county, including six sections of said road, and also the road formerly known as the Washington County railroad, now known as the Western branch of the Houston & Texas Central Railroad Company, as follows: Beginning at a point of junction of said Western branch with the track of the main line of Houston & Texas Central railroad in the town of Hempstead, in Waller county, thence in a general westerly direction through Waller and Washington counties about twenty-one and ¼ miles to a point in Brenham, in Washington county, and upon all of the charter rights of said defendant company, including the road-bed, right of way, grading, bridges, iron, equipments and masonry, and all stock subscribed for in said company or companies, and upon all depots and depot stations, and all of the property owned by said company or companies as necessary for their business—that is to say, on all of the defendant's railroad property from its terminus at Houston through the various counties of the State to its northern terminus in Denison, Grayson county, Texas, and on its Western branch to its northwestern terminus at Austin, Travis county, Texas, including all of the road-bed, right of way, grade, bridges, iron rails, equipments, and masonry, and all depots and depot stations therein.

And the clerk is hereby commanded to issue an order of sale, directed to the sheriff or any constable of Travis county, Texas, commanding him to sell the above-described property or so much thereof as may be necessary for the satisfaction of the judgment rendered in this case, and to issue an order of sale, directed to the sheriff or any constable of any other county in Texas, upon application of plaintiff's counsel, directing all of the property hereinbefore described to be sold or so much thereof as may be sufficient for the satisfaction of the judgment rendered in this case; and in the event said property does not sell for enough to satisfy same, then that an execu-
115 tion may issue in favor of the plaintiff, The State of Texas, for the balance remaining unpaid.

It is further ordered that execution issue in favor of the officers of the court against the defendant for all costs herein incurred, for which they may have their execution.

To which judgment and to the judge's conclusion of law and

fact the defendant excepts and in open court gives notice of appeal to the court of civil appeals.

Order Allowing Ten Days.

MARCH 7TH, 1896.

STATE OF TEXAS
vs.
H. & T. C. R. R. Co. } 11915.

On this day, on motion, it is ordered by the court that the parties to this cause do have ten (10) days' time from and after the adjournment of the present term of this court in which to prepare and file a statement of facts in this cause.

Order on Original Papers.

MARCH 10TH, 1896.

THE STATE OF TEXAS
vs.
THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } 11915.

Upon application of The State of Texas, plaintiff in the above-styled cause—

116 It is hereby ordered by the court that one-half of the original warrants in evidence in this case by the State shall be by the clerk sent up with the transcript to the court of civil appeals and to the Supreme Court and all other tribunals to which it may be carried for the inspection of said courts, said warrants being numbered as follows: 4741, 1811, 1812, 1810, 1821, 1822, 1824, 1823, 1825, 1830, 1829, 1807, 1818, 1816, 1831, 1819, 1806, 1826, 9100, 8917, 2332, 130, 3864, 3863, 3865, 11554, 11552, 11257, 3846, 8955, 3840, 2430, 3971, 3726, 14087, 14085, 14089, 13726, 13725, 15724, 13956, 13955, 13954, 13953, 10591, 13501, 3686, 37100, 115741, 15841, 50310, 1832, 1834, 1833, 9875, 3539, 2318, 8168, 352, 8167, 14678, 15370, 13626, 2470, 3529, 7882, 7869, 7894, 12269, 12268, 925, 5172, 6102, 14254, 5825, 5830, 16889, 7303, 11265, 2050, 7536, 16888, 2859, 4327, 4328, 4318, 4326, 4355, 4353, 910, 16887, 10247, 524, 24439, 84651, 104846, 84645, 55519, 14154, 14174, 42511, 16897, 14155, 18651, 20562, 22972, 69167, and several warrants whose numbers have been so defaced that they cannot be ascertained.

The other and remaining warrants — were offered in evidence and not included herein will be sent up with the case of The State of Texas *vs.* The Galveston, Harrisburg & San Antonio R'y Co., tried in this court, in which case they were likewise offered in evidence.

Def't's Bill of Exceptions No. 2.

Filed March 12th, 1896.

The Fifty-third Judicial District Court in and for Travis County, Texas.

117 THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions number two.

Be it remembered that on the trial of the above numbered and entitled cause defendant, on cross-examination of the witness R. S. Lovett, who was introduced by the plaintiff, and after said witness had testified, as shown in the statement of facts, offered to prove by said witness that he was of counsel in this case and had been specially charged by his associates with the preparation of the case for trial; that he had made inquiries of the auditor and the secretary of the defendant company as to whether the books or records of defendant showed or there was any data within their knowledge showing and whether there was any one then connected with defendant or known to them who knew the date, denomination, or character of the State treasury warrants used in making the payments made in treasury warrants on the loan now in question, and that he was unable to get any such information or learn the name of any person or persons who had such information, and was informed by defendant's auditor and secretary that there were no books, records, or data of any kind in their possession or within their knowledge giving such information; to which evidence counsel for plaintiff objected upon the ground that it was hearsay; which objection was sustained and such evidence excluded; to which action and ruling of the court counsel for defendant then and there duly excepted, and now, on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that the officers of whom witness made inquiry were themselves subsequently sworn and testified to an absence of data
118 in the books on the subjects inquired about, and for all purposes of this decision I held that the defendant was unable to prove the class of warrants used in payments.

F. G. MORRIS,
Judge Fifty-third Judicial District of Texas, Presiding.

(Endorsed:) 11915. State of Texas *vs.* H. & T. C. R. R. Co. 53rd jud. dist. court, Travis Co. Defendant's bill of exceptions # 2. Filed Mar. 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 3.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
v.
HOUSTON AND TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions number three.

Be it remembered that on the trial of the above styled and numbered cause plaintiff's witness, F. R. Lubbock, after testifying, among other things, that he was governor of Texas from November, 1861, to November, 1863, testified, in answer to questions propounded by plaintiff's counsel, substantially and in effect that the market price of the treasury warrants of the State of Texas issued during the war varied at different times; that they commenced depreciating, and in 1863 and 1864 there was little value attached to them; that while governor
119 he was accustomed to sell warrants issued to him for his salary from time to time, and upon his retirement from the office of governor in November, 1863, he sold the warrants issued to him for his salary to Mr. De Foe, a druggist in Austin, for ten cents on the dollar. Reference is here made to the testimony of Governor Lubbock as set forth in the statement of facts for further explanation and as a part of this bill of exceptions; to which questions, answers, and evidence relating to the market value of such warrants and the price for which witness sold warrants counsel for defendant then and there duly objected upon the ground (1) that the same was irrelevant, (2) that the same was immaterial to any issue in this case, and (3) that the State could not legally complain in this case of the depreciating value of her warrants; which objections were by the court overruled and said evidence was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and now, on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that I gave this testimony no effect in reaching a conclusion, because it did not appear when defendant obtained the warrants used in payments or whether they were purchased at the market price or received at par in payment of carrying charges.

F. G. MORRIS,
Judge 53rd Judicial District of Texas, Presiding.

(Endorsed:) 11915. State of Texas *vs.* H. & T. C. R. R. Co. 53rd jud. dist. court, Travis Co. Defendant's bill of exceptions # 3. Filed Mar. 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 4.

Filed March 12th, 1896.

120 In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
v.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions number four.

Be it remembered that on the trial of the above styled and numbered cause counsel for the plaintiff introduced a duly authenticated copy of the message of Governor E. J. Davis to the twelfth legislature of Texas, dated August 6, 1870, vetoing the act entitled "An act for the relief of the Houston & Texas Central Railway Company," which message is set forth in the statement of facts, and to which, as therein contained, reference is here made as a part of this bill of exceptions; to the introduction of which document counsel for defendant then and there duly objected upon the ground (1) that the same was irrelevant and not material to any issue in this case, and (2) that the conclusions, opinions, and arguments therein contained were not admissible as evidence of any fact material in this case; which objections were by the court overruled and said document was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and now, on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that the objectionable evidence was not considered as evidence in deciding the case.

F. G. MORRIS,
Judge Fifty-third Judicial District of Texas, Presiding.

121 (Endorsed:) 11915. State of Texas *vs.* H. & T. C. R. R. Co. 53rd judicial district court, Travis Co. Defendant's bill of exceptions No. 4. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 5.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
v.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions number five.

Be it remembered that on the trial of the above styled and numbered cause counsel for plaintiff offered in evidence that part of the message of Governor Lubbock, dated November 15, 1861, to the regular session of the ninth legislature, which is set forth in the statement of facts, and to which, as there contained, reference is here made as a part of this bill of exceptions. Counsel for defendant then and there objected to the introduction of the same upon the ground (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the plaintiff could not in such manner show the purpose or intent of the legislature in enacting laws or the meaning of laws passed by the legislature, (3) that the same was inadmissible as evidence of the intent or meaning of acts passed by the legislature or for any other purpose, (4) that said message was not admissible as evidence of the facts as therein stated, and (5) that it does not appear that the said message refers to the kind or character of warrants used in making the pay-
122 ments in question and has not been connected by evidence with such warrants; which objections were by the court overruled, and said evidence was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that the objectionable evidence was not considered in deciding the case.

F. G. MORRIS,
Judge Fifty-third Judicial District of Texas, Presiding.

(Endorsed:) 11915. State of Texas *vs.* H. & T. C. R. R. Co 53rd judicial district court, Travis Co. Defendant's bill of exceptions No. 5. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 6.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
v.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions number six.

Be it remembered that upon the trial of the above styled and numbered cause counsel for plaintiff offered in evidence that part of the message of Governor Lubbock, dated February 5, 1863,
123 to the extra session of the ninth legislature, which is set forth in the statement of facts, and to which, as there contained, reference is here made as a part of this bill of exceptions. Counsel for defendant then and there objected to the introduction of the same upon the ground (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the plaintiff could not in such manner show the purpose or intent of the legislature in enacting laws or the meaning of laws passed by the legislature, (3) that the same was inadmissible as evidence of the intent or meaning of acts passed by the legislature or for any other purpose, (4) that said message was not admissible in evidence of the facts as therein stated, and (5) that it does not appear that the said message refers to the kind or character of warrants used in making the payments in question and has not been connected by evidence with such warrants; which objections were by the court overruled, and said evidence was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and on this 8 day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that the objectionable evidence was not considered in deciding the case.

F. G. MORRIS,
Judge Fifty-third Judicial District of Texas, Presid ng.

(Endorsed:) 11915. State of Texas *vs.* H. & T. C. R. R. Co. 53rd judicial district court, Travis Co. Defendant's bill of exceptions No. 6. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 7.

Filed March 12th, 1896.

124 In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
v.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions number seven.

Be it remembered that on the trial of the above styled and numbered cause counsel for plaintiff offered in evidence message of Governor Lubbock, dated November 5, 1863, to the regular session of the tenth legislature, which is set forth in the statement of facts, and to which, as therein contained, reference is here made as a part of this bill of exceptions. Counsel for defendant then and there objected to the introduction of the same upon the ground (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the plaintiff could not in such manner show the purpose or intent of the legislature in enacting laws or the meaning of laws passed by the legislature, (3) that the same was inadmissible as evidence of the intent or meaning of acts passed by the legislature or for any other purpose, (4) that said message was not admissible as evidence of the facts as therein stated, and (5) that it does not appear that the said message refers to the kind or character of warrants used in making the payments in question and has not been connected by evidence with such warrants; which objections were by the court overruled, and said evidence was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered,
125 with the explanation that the objectionable testimony was not considered in deciding the case.

F. G. MORRIS,
Judge of the Fifty-third Judicial District of Texas, Presiding.

(Endorsed:) 11915. State of Texas *vs.* H. & T. C. R. R. Co. 53rd judicial district court, Travis Co. Defendant's bill of exceptions No. 7. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 9.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
v.
HOUSTON & TEXAS CENTRAL RAILROAD Co. } No. 11915.

Bill of exceptions number nine.

Be it remembered that on the trial of the above styled and numbered cause counsel for plaintiff offered in evidence that part of the message of Governor P. Murrah, dated May 11, 1864, to the first extra session of the 10th legislature, which is set forth in the statement of facts, and to which, as there contained, reference is here made as a part of this bill of exceptions. Counsel for defendant then and there objected to the introduction of the same upon the ground (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the plaintiff could not in such manner
126 show the purpose or intent of the legislature in enacting laws or the meaning of laws passed by the legislature, (3) that the same was inadmissible as evidence of the intent or meaning of acts passed by the legislature or for any other purpose, (4) that said message was not admissible as evidence of the facts as therein stated, and (5) that it does not appear that the said message refers to the kind or character of warrants used in making the payments in question and has not been connected by evidence with such warrants; which objections were by the court overruled, and said evidence was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and now, on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that the objectionable testimony was not considered in deciding the case.

F. G. MORRIS,
Judge of the Fifty-third Judicial District of Texas, Presiding.

(Endorsed:) 11915. State of Texas *vs.* H. & T. C. R. R. Co. 53rd judicial district court, Travis Co. Defendant's bill of exceptions No. 9. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 10.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
v.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

127 Bill of exceptions number ten.

Be it remembered that on the trial of the above styled and numbered cause counsel for plaintiff offered in evidence the message of Governor P. Murrah, dated October 20, 1864, to the second extra session of the tenth legislature, which is set forth in the statement of facts, and to which, as therein contained, reference is here made as a part of this bill of exceptions. Counsel for defendant then and there objected to the introduction of the same upon the ground (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the plaintiff could not in such manner show the purpose or intent of the legislature in enacting laws or the meaning of laws passed by the legislature, (3) that the same was inadmissible as evidence of the intent or meaning of acts passed by the legislature or for any other purpose, (4) that said message was not admissible as evidence of the fact as therein stated, and (5) that it does not appear that the said message refers to the kind or character of warrants used in making the payments in question and has not been connected by evidence with such warrants; which objections were by the court overruled, and said evidence was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that the objectionable testimony was not considered in deciding the case.

F. G. MORRIS,
Judge of the Fifty-third Judicial District of Texas, Presiding.

(Endorsed:) 11915. State of Texas *vs.* H. & T. C. R. R. Co. 53rd judicial district court, Travis Co. Defendant's bill of exceptions No. 10. Filed March 12, 1896. Jas. P. Hart, clerk.

128 *Def't's Bill of Exceptions No.* 11.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions No. 11.

Be it remembered that on the trial of the above styled and numbered cause counsel for plaintiff offered in evidence a certificate of R. W. Finley, comptroller of public accounts of the State of Texas, dated the 27th day of January, 1896, under his seal of office, setting forth copies of certain entries therein specified as contained in the books of his department showing the charging of certain eight per cent. State bonds to the military board during the years 1862, 1863, and 1865, and other entries in reference to such bonds during said years. Reference is here made to the said certificate as set forth in the statement of facts as a part of and in further explanation of this bill of exceptions. Counsel for defendant then and there objected to the introduction of said certificate or statement upon the grounds (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the same was not competent evidence in behalf of the State of the contents of the books or of any entries in the books of the comptroller of public accounts of the State of Texas, (3) that the entries in the books of the comptroller set forth in said certificate or state-
129 ment were not competent evidence in behalf of the State for the use, application, and disposition of said bonds or of any other purported fact, and (4) that the warrants used in making the payments in question or the railway companies making such payments or defendants were not connected by the evidence in any way with the facts or transactions set forth or stated in said certificate or statement, or with the transactions of said military board; which objections were by the court overruled, and said evidence was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and now, on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that the objectionable evidence was not considered as evidence in deciding the case, the case having been decided upon the unconstitutionality of the statutes involved and the lack of proof by defendant, each as separate, conclusive, and independent grounds for the decision.

F. G. MORRIS,
Judge of the Fifty-third Judicial District of Texas, Presiding.

(Endorsed:) No. 11915. State of Texas *vs.* H. & T. C. R. R. Co. Bill of exceptions No. 11. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 12.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

130 THE STATE OF TEXAS *vs.* HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions No. 12.

Be it remembered that on the trial of the above styled and numbered cause counsel for plaintiff offered in evidence a statement or account headed "The State of Texas school fund in account with C. H. Randolph, treasurer, for the two months ending on the 31st December, 1864," certified to by R. W. Finley, comptroller of public accounts, under his seal of office, on the 18th day of January, 1896, as a true and correct copy of the instrument then on file in his department, and also certified to by W. B. Wortham, treasurer, under his seal of office, on the 7th day of February, 1896, as a true and correct statement as shown by the books of his office. Reference is here made to the said certified statement as set forth in the statement of facts as a part of and in further explanation of this bill of exceptions. Counsel for defendant then and there objected to the introduction of said statement upon the ground (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the same was not competent evidence in behalf of the State of the contents of the books or of any entries of the books of the comptroller of public accounts or of the treasurer of the State of Texas, (3) that the same purported to be merely a copy of a statement prepared on December 31st, 1864, by C. H. Randolph, the then treasurer of the State, and was not competent evidence in behalf of the State of the facts it purported to show, (4) that the same did not show the character of the treasury warrants therein mentioned, or that they were otherwise than legal and valid, and (5) that the statement or account contained in the books of the comptroller
131 or treasurer or on file in their departments was not competent evidence in behalf of the State of the facts purported to be thus shown or recorded; which objections were by the court overruled, and said evidence was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and now, on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that no finding of fact has been made in favor of the State upon the issue upon which this was introduced.

F. G. MORRIS,
Judge of the Fifty-third Judicial District of Texas, Presiding.

(Endorsed :) No. 11915. The State of Texas *vs.* H. & T. C. R. R. Co. Bill of exceptions No. 12. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 13.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions No. 13.

132 Be it remembered that on the trial of the above styled and numbered cause counsel for plaintiff offered in evidence *or* account headed "The State of Texas school fund in account with C. H. Randolph, treasurer, for two months ending the 28th day of February, 1865," certified to by R. W. Finley, comptroller of public accounts, under his seal of office, on the 18th day of January, 1896, as a true and correct copy of the instrument then on file in his department, and also certified to by W. B. Wortham, treasurer, under his seal of office, on the 7th day of February, 1896, as a true and correct statement, as shown by the books of his office. Reference is here made to the said certified statement as set forth in the statement of facts as a part of and in further explanation of this bill of exceptions. Counsel for defendant then and there objected to the introduction of said statement upon the grounds (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the same was not competent evidence in behalf of the State of the contents of the books or of any entries of the books of the comptroller of public accounts or of the treasurer of the State of Texas, (3) that the same purported to be merely a copy of a statement prepared on February 28th, 1865, by C. H. Randolph, the then treasurer of the State, and was not competent evidence in behalf of the State of the facts it purported to show, (4) that the same did not show the character of the treasury warrants therein mentioned, or that they were otherwise than legal and valid, and (5) that the statement or account contained in the books of the comptroller or treasurer and on file in their departments was not competent evidence in behalf of the State of the facts purported to be thus shown or recorded; which objections were by the court overruled, and said evidence was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and now, on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered,
133 with the same explanation as that given to bill of exceptions No. 12.

F. G. MORRIS,
Judge Fifty-third Judicial District of Texas, Presiding.

(Endorsed:) No. 11915. The State of Texas *vs.* H. & T. C. R. R. Co. Bill of exceptions No. 13. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 14.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions No. 14.

Be it remembered that on the trial of the above styled and numbered cause counsel for plaintiff offered in evidence a statement or account headed "The State of Texas school fund in account with C. H. Randolph, treasurer, for the quarter ending on the 31st day of May, 1865," certified to by R. W. Finley, comptroller of public accounts, under his seal of office, on the 18th day of January, 1896, as a true and correct copy of the instrument then on file in his department, and also certified to by W. B. Wortham, treasurer, under his seal of office, on the 7th day of February, 1896, as a true
134 and correct statement as shown by the books of his office. Reference is here made to the said certified statement as set forth in the statement of facts as a part of and in further explanation of this bill of exceptions. Counsel for defendant then and there objected to the introduction of said statement upon the grounds (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the same was not competent evidence in behalf of the State of the contents of the books or of any of the entries of the books of the comptroller of public accounts or of the treasurer of the State of Texas, (3) that the same purported to be merely a copy of a statement made by C. H. Randolph, the then treasurer of the State, on the 31st day of May, 1865, and was not competent evidence in behalf of the State of the facts it purported to show, (4) that the same did not show the character of the treasury warrants therein mentioned, or that they were otherwise than legal and valid, and (5) that the statement or account contained in the books of the comptroller or treasurer and on file in their departments was not competent evidence in behalf of the State of the facts purported to be thus shown or recorded; which objections were by the court overruled, and said evidence was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and now, on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation appended to bill of exceptions No. 12.

F. G. MORRIS,
Judge of the Fifty-third Judicial District of Texas, Presiding.

(Endorsed:) No. 11915. The State of Texas *vs.* H. & T. C. R. R. Co. Bill of exceptions No. 14. Filed March 12th, 1896. Jas. P. Hart, clerk.

135 *Def't's Bill of Exceptions No.* 15.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions No. 15.

Be it remembered that on the trial of the above styled and numbered cause counsel for plaintiff offered in evidence a statement headed "Statement of treasurer's receipts from revenue and other sources during the months of January and February, 1865," certified to by R. W. Finley, comptroller of public accounts, under his official seal, on the 18th day of January, 1896, as a true and correct copy of the original of said instrument then on file in his department; also certified to by W. B. Wortham, treasurer, under his official seal, on the 7th day of February, 1896, as a true and correct statement as shown by the books of his office; which statement showed the treasurer's receipts from revenue and other sources during the two months stated to be as follows: In new issue Confederate notes, $10,292.08; in specie, $8,794.50; in treasury warrants fundable in 8 per cent. bonds, $9,820.91; in treasury warrants fundable in 6 per cent. bonds, $14,982.34; total, $43,889.83. Counsel for defendant then and there objected to the introduction of said certified statement upon the grounds (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the
136 same was not competent evidence in behalf of the State of the contents of the books or of any entries in the books or records of the comptroller of public accounts of the State of Texas; which objections were overruled and said evidence admitted; to which ruling of the court counsel for defendant then and there duly excepted, and now tender this their bill of exceptions, and on this 7th day of March, 1896, pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation appended to bill No. 12.

F. G. MORRIS,
District Judge.

(Endorsed:) No. 11915. The State of Texas *vs.* H. & T. C. R. R. Co. Bill of exceptions No. 15. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 16.

Filed March 12th, 1896.

n the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions No. 16.

Be it remembered that on the trial of the above styled and numbered cause counsel for plaintiff offered in evidence a statement headed "Statement of treasurer's receipts from revenue and from other
37 sources during the month of April, 1865," certified to by R. W. Finley, comptroller of public accounts, under his official seal, on the 18th day of January, 1896, as a true and correct copy of the original of said instrument then on file in his department, and also certified to by W. B. Wortham, treasurer, under his official seal, on the 7th day of February, 1896, as a true and correct statement, as shown by the books of his office; which statement showed the treasurer's receipts from revenue and other sources during the month of April, 1865, to be as follows: In specie, $43.00; in Confederate notes, $172,231.22; in treasury warrants fundable in 8 per cent. bonds, $6,607.34; in treasury warrants fundable in 6 per cent. bonds, $5,074.00; total, $182,955.56; from special loan taxes, $1,000 in Confederate notes, and from cotton sales, $1,500 in specie. Counsel for defendant then and there objected to the introduction of said certified statement upon the grounds (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the same was not competent evidence in behalf of the State of the contents of the books or of any entries in the books or records of the comptroller of public accounts or of the treasurer of the State of Texas; which objections were by the court overruled and said evidence admitted; to which ruling of the court counsel for defendant then and there duly excepted, and now, on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation appended to bill No. 12.

F. G. MORRIS,
District Judge.

(Endorsed:) No. 11915. The State of Texas *vs.* H. & T. C. R. R. Co. Bill of exceptions No. 16. Filed March 12, 1896. Jas. P. Hart, clerk.

138 *Def't's Bill of Exceptions No.* 17.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions No 17.

Be it remembered that upon the trial of the above styled and numbered cause counsel for the plaintiff offered in evidence that part of the recommendations of C. R. Johns, former comptroller of the State of Texas, made in his annual report as comptroller of public accounts, dated the — day of November, 1861, which part of said report so offered in evidence is set forth in the statement of facts, and to which reference is here made as a part and in further explanation hereof. Counsel for the defendant then and there objected to the introduction of the same upon the grounds (1) that the same was irrelevant and immaterial to any issue in this case, (2) that the plaintiff could not in such manner show the purpose or intent of the legislature in enacting laws or the meaning of laws passed by the legislature, which was the purpose for which it was introduced, (3) that the same was inadmissible as evidence of the intent and meaning of the acts passed by the legislature or for any other purpose, (4) that the same was not admissible as evidence of any of the facts as therein stated, and (5) it is not shown that the same refers to the kind or character of
139 warrants used in making the payments in question and has not been connected by evidence with such warrants; which objections were by the court overruled, and said evidence was admitted; to which action and ruling of the court counsel for the defendant then and there duly excepted, and on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that the objectionable evidence was not considered as evidence in deciding the case.

F. G. MORRIS,
District Judge.

(Endorsed:) No. 11915. The State of Texas *vs.* The H. & T. C. R. R. Co. Bill of exceptions No. 17. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 18.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions No. 18.

Be it remembered that on the trial of the above numbered and styled cause counsel for the plaintiff offered in evidence direct interrogatories Nos. 10 and 11 propounded to and the answers thereto by E. W. Cave, whose depositions were taken in behalf of the
140 plaintiff, and also offered the treasury warrant attached as an exhibit to said depositions and as a part of said answers; which interrogatories and answers and exhibit are contained in the statement of facts, to which reference is here made as a part and in explanation hereof. Counsel for the defendant objected to said questions, answers, and exhibit, in so far as the same was offered as evidence to show the kind and character of warrants used in making the payments in question, upon the ground (1) that the same was irrelevant, and (2) that it was not shown that the warrant which is offered was the kind and character used in making the payments in question; which objections were by the court overruled, and said evidence was admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that the objectionable evidence was not considered in deciding the case.

F. G. MORRIS,
District Judge.

(Endorsed:) 11915. The State of Texas *vs.* The H. & T. C. R. R. Co. Bill of exceptions No. 18. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 19.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

141 THE STATE OF TEXAS
vs.
THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions No. 19.

Be it remembered that upon the trial of the above numbered and styled cause the plaintiff introduced W. C. McCall, who, after testifying in effect that he was an employé in the comptroller's department of the State of Texas and had been, at the instance of the attorney general, assigned by the comptroller, together with G. A. Proctor, to the duty of searching for evidence of the character of the warrants in which the payments in question were made, — that he had been unable to find any data or memoranda of any kind showing the kind or character of warrants used in making such payments; that there were a large number of old warrants, purporting to have been issued during the war, in the basement of the comptroller's office without any indorsement or writing on them to indicate and he was unable to find any data or memoranda to indicate by whom or for what purpose or on what account such warrants were received or from whom they were received; that he had not examined all the warrants in the basement, but at the request of the attorney general, representing the plaintiff in this case, had taken from the lot a number, which he then produced and identified as those so taken by him from the basement of the comptroller's office shortly before the trial. Thereupon, in connection with said witness' testimony, counsel for the plaintiff offered in evidence the treasury warrants so produced by the witness, and which are set forth and described in the statement of facts in connection with the testimony of said witness, to which reference is here made as a part and in explanation hereof and for further description of said warrants;

142 and in so offering them, counsel for the plaintiff stated that they were offered for the purpose of showing the character of the warrant- issued during the war, for the purpose of showing that in form, shape, denomination, and size they were suitable for use as money, and as a circumstance tending to show that they were issued to be circulated, and to show that many of them were issued for military services and in aid of the rebellion. To the introduction of each and all of said warrants for all or either of such purposes, or for any purpose, counsel for defendant then and there objected on the ground (1) that the same were irrelevant and immaterial to any issue in this case, (2) that it is not shown that they were the warrants or the same or similar kind and character of warrants used by the railroad companies under whom the defend-

ant claims in making any of the payments that were made in such treasury warrants for the loan described in the plaintiff's petition, (3) that it appeared that the warrants so offered were selected by the plaintiff's witness from a mass of other warrants the character of which was not shown, and (4) that said warrants were not competent evidence to show all the kind and character of warrants issued at different times and for different purposes and for different amounts during the war; which objections were by the court overruled and said evidence admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and now, on this 7th day of March, 1896, tender this their bill of exceptions and prays that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that the objectionable evidence was not considered in deciding the case.

F. G. MORRIS,
District Judge.

(Endorsed:) No. 11915. The State of Texas *vs.* H. & T. C. R. R. Co. Bill of exceptions No. 19. Filed March 12, 1896. Jas. P. Hart, clerk.

143 *Def't's Bill of Exceptions No.* 20.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions No. 20.

Be it remembered that upon the trial of the above numbered and styled cause the plaintiff introduced G. A. Proctor, who, after testifying in effect that he was an employé of the comptroller's department of the State of Texas, and had been, at the instance of the attorney general, assigned by the comptroller, together with W. C. McCall, to the duty of searching for evidence of the character of the warrants in which the payments in question were made, — that he had been unable to find any data or memoranda of any kind showing the kind or character of warrants used in making such payments; that there were a large number of old warrants, purporting to have been issued during the war, in the basement of the comptroller's office without any indorsement or writing on them to indicate and he was unable to find any data or memoranda to indicate by whom or for what purpose or on what account such warrants were received or from whom they were received; that he had not examined all the warrants in the basement, but at the request of the attorney general, representing the plaintiff in this case, had taken from the lot a number which he then produced and

identified as those taken by him from the basement of the
144 comptroller's office shortly before the trial. Thereupon, in connection with the said witness' testimony, counsel for the plaintiff offered in evidence the treasury warrants so produced by the witness and which are set forth and described in the statement of facts in connection with the testimony of said witness, to which reference is here made as a part and in explanation hereof and for further description of said warrants; and in so offering them counsel for the plaintiff stated that they were offered for the purpose of showing the character of the warrants issued during the war, for the purpose of showing that in form, shape, denomination, and size they were suitable for use as money, and as a circumstance tending to show that they were issued to be circulated and to show that many of them were issued for military services and in aid of the rebellion; to the introduction of each and all of said warrants for all or either of such purposes or for any purpose counsel for defendant then and there objected on the ground (1) that the same were irrelevant and immaterial to any issue in this case; (2) that it is not shown that they were the warrants or the same or similar kind and character of warrants used by the railroad companies under whom the defendant claims in making any of the payments that were made in such treasury warrants for the loan described in the plaintiff's petition; (3) that it appeared that the warrants so offered were selected by the plaintiff's witness from a mass of other warrants, the character of which was not shown, and (4) that said warrants were not competent evidence to show all the kind and character of warrants issued at different times and for different purposes and for different amounts during the war; which objections were by the court overruled and said evidence admitted; to which action and ruling of the court counsel for defendant then and there duly excepted, and now, on this 7th day of March, 1896, tender this their bill of exceptions and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered,
with the explanation that the objectionable evidence was not
145 considered in deciding the case.

F. G. MORRIS,
District Judge.

(Endorsed:) No. 11915. The State of Texas *vs.* The H. & T. C. R. R. Co. Bill of exceptions No. 20. Filed March 12, 1896. Jas. P. Hart, clerk.

Def't's Bill of Exceptions No. 21.

Filed March 12th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Bill of exceptions No. 21.

Be it remembered that upon the trial of the above numbered and styled cause, counsel for defendant offered in evidence cross-interrogatory No. 2, propounded to and the answer thereto by E. W. Cave, whose depositions were taken by the plaintiff, which question and answer were as follows:

"Cross-int'y 2nd. Please state, if you know, whether there was on the 18th day of January, 1861, outstanding and then unpaid bonds and treasury warrants of the State of Texas theretofore executed, issued, and delivered by said State, and whether there was any such bonds and warrants issued prior to the 18th day of January, 1861, and outstanding and unpaid on the 18th day of
146 March, 1861, the 1st day of February, 1861, and during the years 1863, 1864, & 1865.

"Answer to cross-int'y No. 2. My recollection is that in January, 1861, and February and March, 1861, there was outstanding and unpaid a large amount of the State treasury warrants of the State of Texas previously issued, and that a large indebtedness existed at those times for which State treasury warrants had not then been issued. The heavy drain upon the revenues of Texas for the defense of the frontier against Indians, and from incursions from Mexico depleted the treasury, and State treasury warrants were issued and outstanding and unpaid, as stated, in March, 1861, and State treasury warrants were afterwards, during the war, issued to cover indebtedness and appropriations existing prior to March, 1861. I cannot speak as to the bonded indebtedness existing. I do not know what payment was made of such treasury warrants by the State of Texas. My recollection is that they were also made receivable for State taxes and State dues and for sale of the public lands."

To which question and answer and evidence counsel for the plaintiff then and there objected, upon the ground that the books and records of the comptroller's office were the best evidence of the amount of such warrants outstanding and unpaid at the times enquired about, and that said question and answer were not competen evidence of such facts; which objections were by the court sustained and such evidence was excluded; to which action and ruling of the court counsel for defendant then and there duly excepted, and on

this 7th day of March, 1896, tender this their bill of exceptions, and pray that the same be allowed and filed as a part of the record in this cause, and it is so ordered, with the explanation that the court took judicial notice of the fact that large appropriations were made for debts incurred prior to the war against which warrants were issued, and that all of these had not been paid when defendant acquired warrants to make the payments in question.

F. G. MORRIS,
District Judge.

147 (Endorsed:) No. 11915. The State of Texas *vs.* The H. & T. C. R. R. Co. Bill of exceptions No. 21. Filed March 12, 1896. Jas. P. Hart, clerk.

Statement of Facts.

Filed March 31st, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Be it remembered that on the trial of the above styled and numbered cause the following evidence was introduced:

Plaintiff's Evidence.

Plaintiff first introduced in evidence a stipulation in writing signed by defendant's counsel and filed as follows:

In District Court, Travis County, Texas, Fifty-third Judicial District.

THE STATE OF TEXAS
vs.
THE HOUSTON & TEXAS CENTRAL RAILROAD CO. } No. 11915.

It is admitted by the defendant that the State of Texas made to the Houston & Texas Central Railway Company and to the Washington County Railroad Company, under the provisions of
148 an act entitled "An act to provide for the investment of the special school fund in the bonds of railroads incorporated by the State," approved August 13th, 1856, loans in the amounts and at the dates set forth in the plaintiff's original petition, and that said companies executed and delivered to the State of Texas on the dates and in the amounts set forth in said petition the bonds described in the petition, in consideration of said loans.

It is also admitted that on or before the 15th day of August, A. D. 1870, the Washington County railway became consolidated with and merged into the Houston & Texas Central railway, and that

said Houston & Texas Central Railway Company thereafter had possession of and claimed the property which had theretofore belonged to the Washington County Railroad Company.

This admission is not to be construed as an acknowledgment of waiver of any right of either party not expressly covered by it or as affecting any other question in the case of law or of fact not expressed herein, and it is made without prejudice to the right of either party to introduce any other relevant evidence not inconsistent herewith.

(Signed) J. P. BLAIR,
(Signed) BAKER, BOTTS, BAKER & LOVETT,
Att'ys for H. & T. C. R. R. Co.

2. Plaintiff next introduced a duly authenticated copy of the articles of incorporation of the defendant, The Houston & Texas Central Railroad Company, filed in the office of the secretary of state on the first day of August, 1889, as follows:

Articles of Incorporation of the Houston & Texas Central Railroad Company.

Whereas Frederick P. Olcott is the owner of the railroads
149 formerly owned by the Houston & Texas Central Railway Company, a corporation created by and under the laws of the State of Texas, extending from Houston, Harris county, Texas, to Denison, Grayson county, Texas, and from Hempstead, Waller county, Texas, to Austin, Travis county, Texas, with the road-beds, rights of way, tracks, franchises, and chartered rights relating to said railroads or used in the operation thereof; which said railroads and other property were conveyed to him by Charles Dillingham, as special master commissioner; Nelson S. Easton and Jas. Rintoul, as trustee of the main line first mortgage of the Houston & Texas Central Railway Company, dated July 1st, 1866, and of the Western division first mortgage of said railway company, dated Dec. 21st, 1870; the Farmers' Loan & Trust Company, as trustee of the main line and Western division consolidated mortgage, dated October 1st, 1872, and of the general mortgage of said railway company, dated April 1st, 1881, and of the Waco and Northwestern division consolidated mortgage, dated May 1st, 1875; Benjamin A. Shepard, as sole surviving trustee of the income and indemnity mortgage of said railway company, dated May 7th, 1877, and the Houston & Texas Central Railway Company, by deed dated the eighteenth day of January, A. D. 1889; which said deed has been duly recorded in each of the counties into or through which the said railroads run and are constructed, and which said deed was executed in pursuance of a sale of said property, at which said Olcott became the purchaser, made on the 8th day of September, 1888, by virtue and in accordance with a certain order of sale contained in a decree rendered in the circuit court of the United States for the eastern district of Texas on the 4th day of May, A. D. 1888, in a certain cause then pending in said court under the title of "Nelson S.

Easton and James Rintoul, trustees, and The Farmers' Loan & Trust Co., trustees, *vs.* The Houston & Texas Central Railway Company *et als.*," and bearing the number 198, consolidated cause, on the chancery docket of said court; which said sale and pur-
150 chase was in all things confirmed by the said court by an order of confirmation duly entered in the said cause on the fourth day of December, 1888, and

Whereas the said Frederick P. Olcott, desiring to avail himself of the rights and privileges of the general laws of Texas, and more especially of an act entitled "An act to amend chapter II, title LXXXIV of the Revised Civil Statutes of the State of Texas, so as to add thereto another article to be known as article 4260*a*," approved March 29th, 1889, has associated with himself the other subscribers for the purpose of forming a corporation under the laws of the State of Texas to acquire, own, maintain, and operate the railroads so purchased aforesaid (including the power to construct and extend.) Now to this end the said Olcott and his associates adopt and sign the following articles of incorporation:

Article I.

The name of said corporation shall be the Houston & Texas Central Railroad Company.

Article II.

This corporation is organized for the purpose of acquiring, owning, maintaining, and operating (including the power to construct and extend) the railroads heretofore forming a part of the railroads of the Houston & Texas Central Railway Company, and known as the "main line" and "Western division" of said railway, sold and purchased as herein stated in the preamble, the said "main line" commencing at the city of Houston, in Harris county, and extending to Denison, in Grayson county, in the State of Texas, through the counties of Harris, Waller, Grimes, Brazos, Robertson, Falls, Limestone, Freestone, Navarro, Ellis, Dallas, Collin, and Grayson, a distance of about three hundred and forty-five (345) miles; and the "Western division," commencing at Hempstead, in Waller county, and extending to the city of Austin, in Travis county, through the counties of Waller, Washington, Lee, Fayette, Bastrop, and
151 Travis, a distance of about one hundred and nineteen (119) miles; the total length of said railroad being four hundred and sixty-four (464) miles.

Article III.

The principal business office of the said corporation shall be established and maintained in the city of Houston, Harris county, Texas.

Article IV.

The time of commencement of the said corporation shall be the date of the filing of these articles of incorporation in the office of the secretary of state of Texas, and the period of the continuation

of the same shall be fifty years with the right of renewal from time to time as prescribed by the laws under which this corporation is formed.

Article V.

The amount of the capital stock of said corporation shall be ten million dollars.

Article VI.

The names and places of residence of the several persons forming the association for incorporation are as follows:

Names.	Residence.
Frederick P. Olcott	New York city.
Benjamin G. Mitchell	New York city.
George S. Ellis	Parkville, Long Island, N. Y.
Henry E. Malin	New York city.
Frank W. Emery	New York city.
Frank L. Grant	Brooklyn, N. Y.
James N. Wallace	Jersey City, N. J.
Milton Ferguson	Brooklyn, N. Y.
John Q. Adams, Jr.	Orange, N. J.
Phillip S. Babcock	Brooklyn, N. Y.
William H. Ludlum	Staten Island, N. Y.

152 Article VII.

The government of the said corporation and the managment of its affairs shall be vested in a board of directors consisting of nine persons. The names of the members of the first board of directors are as follows:

E. Francis Hyde.
Charles H. P. Babcock.
Charles Dillingham.
E. W. Cave.
George A. Quinlan.
J. J. Atkinson.
Charles Fowler.
Daniel Ripley.
J. G. P. Sumner.

Article VIII.

The capital stock of said corporation is divided into one hundred thousand shares of one hundred dollars each.

Witness our hands this the twenty-fourth day of July, A. D. 1889.

(Signed) F. P. OLCOTT.
BENJAMIN G. MITCHELL.
G. S. ELLIS.
H. E. MALIN.
F. W. EMERY.
F. L. GRANT.
J. N. WALLACE.
M. FERGUSON.
JNO. Q. ADAMS, JR.
PHILLIP S. BABCOCK.
WILLIAM H. LUDLUM.

153 STATE OF NEW YORK, } ss.
City & County of New York, }

Before me, Henry H. Whitman, a notary public in and for said county of New York, duly qualified, personally appeared Frederick P. Olcott, George S. Ellis, Henry E. Malin, Frank W. Emery, Frank L. Grant, James N. Wallace, Milton Ferguson, John Q. Adams, Jr., Philip A. Babcock, William H. Ludlum, and Benjamin G. Mitchell, known to me to be all of the persons whose names are subscribed to the foregoing instrument, and each for himself acknowledged to me that he executed the same for the purposes and consideration therein contained.

Given under my hand and seal of office this 24th day of July, A. D. 1889.

[L. S.] (Signed) HENRY H. WHITMAN,
Notary Public, N. Y. Co.

STATE OF NEW YORK, } ss.
City & County of New York, }

I, Edward F. Reilly, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that Henry H. Whitman, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same, and further that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 24th day of July, 1889.

[L. S.] (Signed) EDWARD F. REILLY, *Clerk.*

154 STATE OF TEXAS, }
County of Harris. }

We, the undersigned directors, named in the articles of incorporation of the Houston & Texas Central Railroad Company, under oath declare that a stock subscription to the amount of one thousand dollars for every mile of said railroad so intended to be acquired and operated, as set forth in article II of said articles of incorporation hereto attached, has been in good faith subscribed, and that five per cent. of the amount subscribed has been actually paid to the directors in said articles.

(Signed) CHAS. DILLINGHAM.
J. G. P SUMNER.
E. W. CAVE.

Subscribed and sworn to before me this 31st day of July, A. D. 1889.

[L. S.] (Signed) T. BLAKE DUPREE,
Notary Public, Harris County, Texas.

Certificate.

ATTORNEY GENERAL'S OFFICE,
AUSTIN, *July 30th*, 1889.

This is to certify that the original articles of incorporation of the Houston & Texas Central Railroad Company were submitted to me on the 30th day of July, 1889, and that, having carefully examined the same, I find them in accordance with the provisions of chapter 1, title 84, of the Revised Statutes of Texas and not in conflict with the laws of the United States or of the State of Texas.

[L. S.] (Signed) J. S. HOGG,
Attorney General.

DEPARTMENT OF STATE.

155 I, Allison Mayfield, secretary of state of the State of Texas, do hereby certify that the foregoing is a true copy of the original charter of the Houston & Texas Central Railroad Company, with the endorsements thereon, as now appears of record in this department.

Witness my official signature and the seal of State affixed, [L. S.] at the city of Austin, this 16th day of January, A. D. 1896.

(Signed) ALLISON MAYFIELD,
Secretary of State.

3. In connection with the introduction of the foregoing copy of the articles of incorporation of defendant it was in open court admitted by defendant that, having been organized and existing under and by virtue of such articles of incorporation, defendant now and at the time of the institution of this suit was in possession and claimed under proper deeds of conveyance from F. P. Olcott, and under such charter to own and operate the railroad and property described in plaintiff's original petition.

4. It was admitted by defendant in open court that all payments made on account of the loan to the Washington County Railroad Company after that company was merged into the Houston & Texas Central Railway Company, in 1870, up to the time that such payments on account of the loan to the Washington County Railroad Company were discontinued, in 1879, were made by the Houston & Texas Central Railway Company; that all payments on account of the loan to the Houston & Texas Central Railway Company that were made after February, 1885, and prior to April, 1893, were made by receivers of the property and affairs of said railway company, and that all the payments on account of said loan paid subsequent to April first, 1893, were made by The Houston & Texas Central Railroad Company, the defendant in this case.

156 Plaintiff rested.

Defendant's Evidence.

1. Defendant first introduced, over the objection of the attorney general, an act of the legislature of the State of Texas entitled "An act for the relief of the Houston & Texas Central Railway Company," as follows, to wit, together with a certificate of the secretary of state appended to the same:

"Whereas, the Houston & Texas Central Railway Company has become the owner, by purchase, of the Washington County railroad; and,

Whereas, the Houston & Texas Central Railway Company and the Washington County Railroad Company are indebted to the State of Texas for sums borrowed from the special school fund; and,

Whereas, the Houston & Texas Central Railway Company is desirous to extend the Washington County branch to the city of Austin, as soon as it can be done, and to build its main trunk to Red river in the shortest time possible, and also to build a branch road from some point in Navarro county, so as to strike Red river at such a point as will enable said company to form a connection with any railroad that may be built southward, from Kansas or Missouri, to said river; and,

Whereas, the ability of said company to build said main trunk and branch roads would be greatly increased by the consent of the State to exchange the six per cent. bonds of the said companies, now held by the State, for the seven per cent. gold interest-bearing bonds of the said Houston & Texas Central Railway Company, issued by virtue of a deed of trust executed by said company on the 1st day of July, A. D. 1866, in which deed of trust Shepherd Knapp and David S. Dodge, of the city of New York, are named (and have accepted) as trustees; and,

157 Whereas, it is believed that such exchange can be made without in any manner endangering the security of the school fund; therefore,

SECTION 1. Be it enacted by the legislature of the State of Texas, That the Washington County railroad is hereby made and declared to be, to all intents and purposes in law, a part of the Houston & Texas Central railway, and shall be under the control and management of the Houston & Texas Central Railway Company, in like manner as every other part of the said railway; and the Houston & Texas Central Railway Company shall have the right to build and extend the part of its railway, heretofore known as the Washington County railroad, from the town of Brenham, in the county of Washington, to the city of Austin, in the county of Travis, by the most eligible route to be selected by the engineers of the company; and the said company shall also have the right to build a branch road diverging from the main trunk at some point in Navarro county, and striking Red river at such point as will enable said railway company to make a connection with any railroad

which may be built to said river from the northward; and the said Houston & Texas Central Railway Company, by reason of the construction of the said railway from the town of Brenham to the city of Austin, and by reason of the construction of the said branch from Navarro county to Red river, shall have and enjoy all the rights, privileges, grants, and benefits that are now, or may at any time hereafter be secured to any railroad company in the State of Texas, by any general law of the State, and shall be subject, in respect of said railway and said branch, to all the duties and responsibilities imposed upon said Houston & Texas Central Railway Company by its charter, and by other laws of the State.

Sec. 2. For the whole amount of principal and interest due to the State by the Houston & Texas Central Railway Company, and
158 the Washington County Railroad Company, on the first day of July, A. D. 1870, the governor of the State shall accept and receive from the Houston & Texas Central Railway Company the seven per cent. land-grant sinking-fund first-mortgage, gold interest-bearing bonds of said company, which said bonds, also payable in gold, are issued, or to be issued *to* by virtue of a deed of trust executed by the said company on the first day of July, A. D. 1866, and mature on the first day of July, A. D. 1891, the interest on which is payable on the first days of January and July of each year, in which deed of trust Shepherd Knapp and David S. Dodge, of New York, were named and accepted as trustees; and the governor shall, after making the exchange of bonds herein provided for, cancel and deliver to said railway company, the six per cent. bonds of the Houston & Texas Central Railway Company, and of the Washington County Railroad Company, now held by the State for sums borrowed from the school fund; and the settlement and exchange of bonds herein provided for, shall be made at any time that may be agreed upon by the governor and the said railway company, between the passage of this act and the first day of December, A. D. 1870; and in making the settlement herein provided for, the Houston & Texas Central Railway Company shall be allowed a credit for the sums paid in the treasury warrants of the State during the years 1864 and 1865, by the said company and by the Washington County Railroad Company, upon the accounts on which said sums were respectively paid by said companies, the said sums amounting in the aggregate to one hundred and fifty-two thousand eight hundred and sixty-four dollars and fifty-five cents; provided that the said Houston & Texas Central Railway Company shall never issue an amount of the seven per cent. bonds above described to exceed twenty thousand dollars to the mile of completed road, including such bonds as have been already issued; nor shall said company ever issue any other bond that shall rank as a first-mortgage bond on its road, without first paying the whole amount of the indebtedness of the company to the State.

159 Sec. 3. The said Houston & Texas Central Railway Company is hereby authorized—any former laws to the contrary notwithstanding—to build its road through the counties of Limestone and Navarro, on the most eligible route, to be designated by

its engineers; provided, that the main trunk of said railway shall pass through the county of Dallas, and to a point on Red river within fifteen miles of Preston, as is now required by law, and shall be built as fast as the branch.

SEC. 4. No forfeiture of any of the rights or privileges secured to it by existing laws shall be enforced against the said Houston & Texas Central Railway Company, by reason of its failure to comply with the conditions as to construction, imposed by the first section of the act of the twenty-first of September, A. D. 1866, entitled "An act granting lands to the Houston & Texas Central Railway Company;" but the said company shall have and enjoy all the rights and privileges secured to it by existing laws, the same as if the conditions embraced in the first section of the said act of the twenty-first of September, A. D. 1866, had been, in all respects complied with; provided, that the land grant to said company shall cease, unless the said company shall complete their main trunk, east of the Brazos river, to Richland creek, in Navarro county, within twelve months from the first of October, A. D. 1870, and shall also complete their road to the city of Austin within two years after the passage of this act.

SEC. 5. The branch road from Navarro county to Red river, provided for in the first section of this act, shall be, to all intents and purposes in law, a part of the Houston & Texas Central railway, and shall be under the control and management of the said Houston & Texas Central Railway Company, in like manner as every other part of the said railway.

SEC. 6. All laws and parts of laws now in force concerning the Houston & Texas Central Railway Company, or the Washington County Railroad Company, not in conflict with the foregoing provisions, shall not be affected by the passage of this act; but the State shall always have the right to interfere, by such legislation as may be thought necessary, to prevent neglect on the part of the said Houston & Texas Central railway, so that the same may always remain an adequate security to the State for the amount that may be due by the company.

160

SEC. 7. This act shall take effect from and after its passage.

(Signed) IRA H. EVANS,
Speaker House of Representatives.

(Signed) DON CAMPBELL,
President of the Senate.

Passed by house of representatives July 18th, 1870.

(Signed) JNO. G. BOYLE,
Chief Clerk H. R.

Passed the senate July 28th, 1870.

(Signed) C. C. ALLEN,
Secretary of the Senate.

Received August 2nd, 1870, at 11.30 a. m.

(Signed) EDM'D J. DAVIS, *Governor.*

Vetoed by the governor Aug. 6th, 1870.

This bill was brought to the office of the secretary of state by John G. Boyle, chief clerk of the house of representatives, on the 30th day of August, A. D. 1870, and deposited with me.

(Signed) JAS. P. NEWCOMB,
Secretary of State,
Per J. E. OLDRIGHT,
Chief Clerk and Acting Secretary of State.

On this day August 6th, 1870, the house passed this bill over the veto of the governor.

(Signed) JNO. G. BOYLE,
Ch'f Cl'k H. Rep.

161 August 15th, 1870.—Reconsidered and passed, notwithstanding the objection of his excellency the governor.

(Signed) C. C. ALLEN,
Secretary of Senate.

In the house of representatives, Austin, Texas.

AUGUST 6TH, 1870.

The governor of the State of Texas having returned to the house of representatives, in which it originated, the bill entitled "An act for the relief of the Houston & Texas Central Railway Company," with his objections thereto, the house of representatives proceeded, in pursuance of the constitution, to reconsider the same, and resolved that the bill do pass, two-thirds of the house of representatives agree to pass the same.

Attest:

(Signed) JNO. G. BOYLE,
Chief Clerk H. R.

[Written across the face in red ink:] This certificate, though it is dated the 6th day of August, 1870, was actually appended on the 29th day of August, A. D. 1870. (Signed) Jno. G. Boyle, ch'f cl'k H. Rep.

In the senate of the State of Texas.

AUGUST 15TH, 1870.

The senate having proceeded in pursuance of the constitution to reconsider the bill entitled "An act for the relief of the Houston & Texas Central Railway Company," returned to the house of representatives by the governor with his objections and sent by the house of representatives to the senate with the message of the governor returning the bill:

Resolved, That the bill do pass, two-thirds of the senate agreeing to pass the same.

Attest:

(Signed) C. C. ALLEN,
Secretary of the Senate.

[Written across the face in red ink:] This certificate, though it is dated the 5th Aug., date of adjournment, was actually appended on the 29th day of Aug., 1870. (Signed) C. C. Allen, secretary of senate.

THE STATE OF TEXAS, }
Department of State. }

I, Allison Mayfield, secretary of state of the State of Texas,
162 do hereby certify that the within and foregoing is a true and correct copy of a certain instrument in writing, with the endorsements thereon, found among the original enrolled special laws of the twelfth legislature of the State of Texas, said original enrolled laws and said instrument of writing being bound together in one volume and the volume entitled "Special Laws of Texas," vol. 2, "Twelfth Legislature, 1870."

Said instrument of writing, of which the within and foregoing is a true copy, purporting to be an original enrolled bill passed by the twelfth legislature of the State of Texas, entitled "An act for the relief of the Houston & Texas Central Railway Company."

I further certify that there is endorsed on said instrument of writing the following certificate:

"In the house of representatives, Austin, Texas.

AUGUST 6TH, 1870.

The governor of the State of Texas having returned to the house of representatives, in which it originated, the bill entitled "An act for the relief of the Houston & Texas Central Railway Company," with his objections thereto—

The house of representatives proceeded in pursuance of the constitution to reconsider the same, and resolved that the bill do pass, two-thirds of the house of representatives agree- to pass the same.

Attest:

(Signed) JNO. G. BOYLE,
Chief Clerk H. R.

And that across said certificate there is an endorsement in red ink as follows:

"This certificate, though it is dated the 6th day of August, 1870, was actually appended on the 29th day of August, A. D. 1870.

(Signed) JNO. G. BOYLE,
Ch'f Cl'k H. Rep."

163 That there is endorsed on said instrument of writing the following certificate:

"In the senate of the State of Texas.

AUGUST 15TH, 1870.

The senate having proceeded, in pursuance of the constitution, to reconsider the bill entitled 'An act for the relief of the Houston & Texas Central Railway Company,' returned to the

house of representatives by the governor with his objections and sent by the house of representatives to the senate with the message of the governor returning the bill:

Resolved, That the bill do pass, two-thirds of the senate agreeing to pass the same.

Attest:

(Signed) C. C. ALLEN,
Secretary of the Senate."

And across said certificate, written in red ink, is the following:

"This certificate, though it is dated the 15th Aug. (date of adjournment), was actually appended on the 29th day of Aug., 1870.

(Signed) C. C. ALLEN,
Secretary of Senate."

The said original instrument of writing being now on file in this department.

Witness my official signature and the seal of State affixed, (L. S.) at the city of Austin, this the 30th day of January, A. D. 1896.

(Signed) ALLISON MAYFIELD,
Secretary of State.

Counsel for plaintiff objected to the introduction of the foregoing act upon the grounds, substantially, that the certificates of the clerk of the house and secretary of the senate were not sufficient to show the passage of the bill originally; (2) that the memo-
164 randa on the bill shows that it was vetoed by the governor on August 6th, 1870, and there is no certificate from the clerk of the house or secretary of the senate to show that the bill was passed by the requisite two-thirds majority over the veto of the governor, and (3) that the certificates show that they were made after the adjournment of the legislature, and that the bill was not deposited in the secretary of state's office until after the adjournment of the legislature.

Before said objections were ruled on by the court counsel for defendant offered, over the objection of the attorney general, in connection with said act duly authenticated copies from the journals of the house of representatives showing the passage of said bill, over the veto of the governor, by the necessary two-thirds vote as follows:

Extract from the House Journal, Twelfth Legislature, Page 487.

Mr. Stockbridge introduced a bill to be entitled "An act for the relief of the Houston & Texas Central Railway Company."

Bill read first time and referred to committee on internal improvements.

Page 562.

Hon. Ira H. Evans, speaker of the house of representatives.

SIR: Your committee on internal improvements, to whom was referred house bill No. 350, entitled "An act for the relief of the Houston & Texas Central Railway Company," have carefully considered the same and instructed me to report said bill, with accompanying amendments, to the house, with the recommendation that it pass.

Your committee are of the opinion that the exchange of bonds provided for in said bill will not only be safe, but to the advantage of the State, while it will enable the company to use a large sum in the construction of their roads.

165 Your committee deem it but simple justice to the company, undr existing circumstances, to grant it the right to build a a road from Brenham to Austin and to make the whole road from Hempstead to Austin a part of the Central railway.

Your committee are of the opinion that the Houston and Texas Central Railway Company has already done much to develop the resources of the State and to attract capital to Texas as a great theatre for enterprise, and that the company is entitled to the confidence of the State and to all the relief in the bill.

Very respectfully,

(Signed) C. B. MORRIS,
Chairman pro Tem. of Committee.

Report and bill passed to orders of the day.

* * * * * * *

Page 609.

Mr. Cooper moved a suspension of the rules to take up out of its regular order house bill No. 350, to be entitled "An act for the relief of the Houston and Texas Central Railroad Company."

Upon which the yeas and nays were demanded by Messrs. Robinson, Lacy, and Burnett, and resulted as follows:

Yeas—Messrs. Austin, Abbott of Austin, H. R. Allen, Richard Allen, Becton, Burley, Booty, Chambers, Cooper, Cotton, Camp, Dupree, Ellis, Franks, Gaston, Gardinet, George, Harn, Hamilton, Johnson, Jenkins, Kyle, Kendall, Lacy, Lane, Leonard, Moore of Harrison, Morris, Mitchell, Miller, Pusey, Pierson, Plumley, Schulte, Sheriff, Simmons, Sinclair, Slaughter, Smyth, Stirman, Stockbridge, Shelburne, Van Noy, Weaver of Hunt, Williams of Walker, Weaver of Johnson, York, Youngkin—48.

Nays—Messrs. Speaker, Abbott, Abbott of Hill, Burnett, Cox, Davis, Dorris, Grothaus, Hawkins, Locke, Lyons, Manning, Morrison, McLean, McKee of Guadalupe, Nedlock, Moore of Red River, Prissick, Robinson, Schlotman, Spencer, Tegener, Williams of Colorado, Zapp, Zoeller—24.

166 So the rules were suspended and the bill read the second time.

* * * * * * *

Page 645.

Mr. Schultze moved a suspension of the rules to take up out of its regular order house bill No. 350, to be entitled "An act for the relief of the Houston & Texas Central Railroad Company," upon which motion the yeas and nays were called for by Messrs. Burnett, Robinson, and Schultze, and resulted as follows:

Yeas—Messrs. Austin, Abbott of Austin, H. R. Allen, R. Allen, Abbott of Hill, Becton, Burley, Booty, Chambers, Cooper, Cotton, Camp, Dupree, Dorris, Ellis, Franks, Gardner, Grothaus, Harn, Hamilton, Haswell, Hawkins, Jenkins, Kyle, Kendall, Lacy, Lane, Leonard, Morrison, Moore of Harrison, Morris, McLean, McKee of Guadalupe, Mitchell, Mullins, Miller, Posey, Pierson, Plumly, Ross, Schlickum, Schlotman, Schultze, Sinclair, Slaughter, Smyth, Stirman, Stockbridge, Shelburne, Tinsley, Van Noy, Weaver of Hunt, Weaver of Johnson, York, Zapp—56.

Nays—Messrs. Speaker, Burnett, Davis, George, Lyons, Manning, Nedlock, Robinson, Williams of Walker, Williams of Colorado, Youngkin, Zoeller—12.

So the rules were suspended.

(Mr. McLean in the chair.)

The following amendments, recommended by the committeee on internal improvements, were adopted:

Insert after the figures 1866, in line seven, section two, as follows: "and mature on the first day of July, 1891, the interest on which is payable on the first days of January and July of each year."

Add to the end of section three the following: "and shall be built as fast as the branch."

On motion of Mr. Slaughter, the house resolved itself into committee of the whole for the consideration of the bill.

167 (Mr. McLean in the chair.)

1.25 P. M.

The committee rose. The chairman reported the committee had had under consideration the bill for the relief of the Houston and Texas Central Railway Company, and recommended the passage of the same with certain amendments, and asked that the committee be discharged from further consideration of the subject.

Report accepted and committee discharged.

The following amendment, recommended by committee of the whole, on motion of Mr. Sinclair, was laid on the table:

In section two, line seventeen, after the words "allowed a," insert the word "temporary."

The following amendment was recommended by the committee of the whole:

Add the following to section four: "and provided further, that upon the completion of the main track to Richland Creek and to the city of Austin, within the time specified in this section, then the amount of $152,864.55 paid by the Texas Central Railway Company and Washington County railroad, in the treasury warrants of the State in 1864 and 1865, shall be an absolute credit to said Houston & Texas Central Railway Company."

Mr. Sinclair moved to lay the amendment on the table, upon which the yeas and nays were called for by Messrs. Slaughter, Cooper, and McLean, and resulted as follows:

Yeas—Messrs. H. R. Allen, Richard Allen, Becton, Burley, Burnett, Bonner, Cooper, Camp, Dupree, Ellis, Franks, Gaston, Gardiner, Grothaus, George, Hughes, Harn, Hamilton, Haswell, Hawkins, Johnson, Jenkins, Kyle, Kendall, Lacy, Lane, Leonard, Looke, Lyons, Manning, Morrison, Moore of Harrison, Morris, Mullins, Miller, Posey, Pierson, Plumley, Robb, Ross, Schlickum, Schlotman, Schultze, Sheriff, Sinclair, Smyth, Stockbridge, Tegner, Tinsley Van Noy, Weaver of Johnson, York, Zapp, Zoeller—54.

168 Nays—Messrs. Austin, Abbott of Austin, Abbott of Hill, Booty, Davis, Dorris, McLean, McKee of Guadalupe, Mitchell, Moore of Red River, Prissick, Slaughter, Stirman, Shelburne, Weaver of Hunt, Williams of Walker, Youngkin—18.

So the amendment was laid on the table.

Mr. R. L. Moore moved that the house adjourn. Lost.

Mr. Franks moved that the bill be ordered to be engrossed and read the third time, upon which motion the yeas and nays were called for by Messrs. Burnett, Davis, and Robinson, and resulted as follows:

Yeas—Austin, Abbott of Austin, H. R. Allen, R. Allen, Abbott of Hill, Becton, Burley, Booty, Bonner, Cooper, Cotton, Camp, Dupree, Dorris, Ellis, Franks, Gaston, Gardiner, Harn, Hamilton, Haswell, Hawkins, Johnson, Jenkins, Kendall, Lacy, Lane, Leonard, Morrison, Moore of Harrison, Morris, McLean, McKee of Guadalupe, Mitchell, Mullins, Miller, Moore of Red River, Posey, Pierson, Robb, Ross, Schlickum, Schlotman, Schutze, Sheriff, Sinclair, Slaughter, Smyth, Stirman, Stockbridge, Shelburne, Tegener, Tinsley, Van Noy, Weaver of Hunt, Williams of Walker, Weaver of Johnson, York, Zapp—60.

Nays—Messrs. Burnett, Davis, Grothaus, George, Locke, Lyons, Manning, Medlock, Prissick, Youngkin, Zoeller—11.

So the bill was ordered to be engrossed and read the third time.

Mr. Plumley moved a suspension of the rules to put the bill on its final passage, upon which motion the yeas and nays were called for by Messrs. Burnett, Robinson, and Davis, and resulted as follows:

Yeas—Austin, Abbott of Austin, Allen, H. R.; Allen, Richard; Abbott of Hill, Becton, Burley, Booty, Bonner, Cooper, Cotton, Camp, Dupree, Dorris, Ellis, Franks, Gaston, Gardiner, Harn, Hamilton, Haswell, Hawkins, Johnson, Jenkins, Kyle, Kendall, Lacy, Lane, Leonard, Morrison, Moore of Harrison, Morris, McLean,

169 Mitchell, Mullins, Miller, Posey, Pierson, Plumley, Robb, Ross, Schlickum, Schlotman, Schutze, Sheriff, Sinclair, Slaighter, Smyth, Stirman, Stockbridge, Shelburn, Tegener, Tinsley, Van Noy, Weaver of Hunt, Williams of Walker, Weaver of Johnson, York, Zapp—59.

Nays—Messrs. Burnett, Davis, Grothaus, George, Hughes, Locke, Lyons, Manning, McKee of Guadalupe, Medlock, Moore of Red River, Prissick, Robinson, Youngkin, Zoeller—15.

So the rules were suspended, and the bill was read the third time.

Mr. Burnett moved that the house adjourn. Lost.

The question being on the passage of the bill, yeas and nays were called for by Messrs. Burnett, Robinson, and Davis, and resulted as follows:

Yeas—Messrs. Austin, Abbott of Austin, H. R. Allen, R. Allen, Abbott of Hill, Becton, Burley, Booty, Bonner, Cooper, Cotton, Camp, Dupree, Dorris, Ellis, Franks, Gaston, Gardiner, Hughes, Harn, Hamilton, Haswell, Hawkins, Johnson, Jenkins, Kyle, Kendall, Lacy, Lane, Leonard, Morrison, Moore of Harrison, Morris, McLean, Mitchell, Mullins, Moore of Red river, Miller, Posey, Pierson, Plumley, Robb, Ross, Schlickum, Schlotman, Schutze, Sheriff, Sinclair, Slaughter, Smyth, Stirman, Stockbridge, Shelburne, Tegener, Tinsley, Van Noy, Weaver of Hunt, Williams of Walker, Weaver of Johnson, York, Zapp—61.

Nays—Speaker, Burnett, Davis, Grothaus, George, Locke, Lyons, Manning, J. F. McKee, Medlock, Prissick, Robinson, Youngkin, Zoeller—14.

So the bill passed and its title was agreed to.

* * * * * * *

Page 791.

Mr. Schutze moved a suspension of the rules to take up house bill No. 350, to be entitled "An act for the relief of the Houston & Texas Central Railway Company."

170

Rules suspended, and the house agreed to the following senate amendment:

Amend section three: After the word "Dallas" and before the word "as," in fifth line, insert "and to a point on Red river within fifteen miles of Preston."

* * * * * * *

Page 891.

EXECUTIVE OFFICE, AUSTIN, *August* 6, 1870.

Hon. Ira H. Evans, speaker of the house of representatives.

SIR: I feel it my duty to return to your house, where it originated, "An act for the relief of the Houston & Texas Central Railway Company," and ask that the same be reconsidered.

* * * * * * *

Respectfully,

(Signed) EDMUND J. DAVIS, *Governor.*

Page 894.

Mr. Hughes moved that the consideration of the governor's message be made the special order for Tuesday next, at 10 o'clock a. m., and that the message be printed.

Mr. B. F. Williams moved a call of the house.

Call sustained.

Absent: Messrs. Posey, Robinson, and Tinsley.

Mr. Robinson was excused from attendance for the day.

On motion of Mr. B. F. Williams, the sargeant-at-arms was dispatced for the absentees.

Mr. Burnett moved a suspension of the call of the house.

Call suspended.

The question recurring on the motion of Mr. Hughes, it was lost.

* * * * * * *

171 Page 895.

(Mr. Burnett in the chair.)

The question being "Will the house, on reconsideration, pass the bill?" the yeas and nays, being taken, resulted as follows:

Yeas—Messrs. Austin, Abney, C. L. Abbott, H. R. Allen, R. Allen, Jo Abbott, Becton, Burley, Booty, Bonnor, Cooper, Cotton, Camp, Dorris, Ellis, Franks, Gaston, Gardiner, George, Hamilton, Haswell, Johnson, Jenkins, Kyle, Kendall, Lacy, Lane, Leonard, Henry Moore, McLean, Miller, Posey, Pierson, Plumley, Ross, Schlickum, Schlotman, Schutze, Sheriff, Simmons, Sinclair, Slaughter, Stirman, Stockbridge, Shelburne, Tegener, S. S. Weaver, J. C. Weaver, Young, York—50.

Nays—Speaker Burnett, Chambers, Cox, Dupree, Davis, Grothaus, Hughes, Harn, Locke, Morrison, J. F. McKee, Mitchell, Mullins, Medlock, Prissick, Robinson, Smyth, R. Williams, B. F. Williams, Youngkin, Zapp, Zoeller—23.

So the house, on reconsideration, passed the bill.

* * * * * * *

THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, Allison Mayfield, secretary of state of the State of Texas, do hereby certify that the within and foregoing are true copies of extracts from the house journal of the twelfth legislature of the State of Texas, which convened in the city of Austin April 26th, 1870, and adjourned August 15, 1870.

Witness my official signature and the seal of State, affixed at the city of Austin, this the 18th day of January, A. D. 1896.

[SEAL.] (Signed) ALLISON MAYFIEED,
Secretary of State.

172 *Extracts from Senate Journal, Twelfth Legislature.*

Page 108.

Senator Baker introduced a bill entitled "An act for the relief of the Houston & Texas Central Railway Company."

Read first time.

Referred to committee on internal improvements.

Page 398.

SENATE CHAMBER,
AUSTIN, TEXAS, WEDNESDAY, *July* 20, 1870.

Message from the house with its action—house bill No. 433.

Also house bill No. 350, "An act for the relief of the Houston & Texas Central Railway Company."

Page 472.

On motion of Senator Baker, the rules were suspended to take up house bill No. 350, "An act for the relief of the Houston & Texas Central Railway Company."

Bill read first time. Rules suspended and bill read second time.

Senator Broughton offered the following amendment:

Amendment, section three, to come in after the words "Dallas" and before the word "as," in fifth line—insert "and to a point on Red river within fifteen miles of Preston."

Adopted.

Rules suspended and bill read third time.

Yeas and nays taken on final passage.

Yeas—Mr. President, Baker, Bell, Bowers, Broughton, Clark, Cole, Dohoney, Flanagan, Ford, Fountain, Gaines, Mills, Parsons, Pickett, Pridgen, Pyle, Rawson, Ruby, Saylor, Shannon—21.

173 Nays—Douglass, Evans, Hall, Hertzberg, Pettit, Priest—6.

Absent—Latimer.

Bill passed.

Page 458.

Message from the house informing the senate the speaker had signed in open session enrolled bills.

Also that the house had concurred in senate amendment to house bill No. 350.

Page 510.

Message from the house informing the senate the speaker had signed in open session enrolled bill "An act for the relief of the Houston and Texas Central Railway Company."

Page 579.

Message from the house informing the senate the house had passed house bill.

Page 580.

Also informing the senate that the house, on reconsideration, had passed "An act for the relief of the Houston & Texas Central Railway Company," vetoed by the governor August 6, 1870.

Page 698.

On motion of Senator Baker, the rules were suspended to take up the governor's veto message on "An act for the relief of the Houston & Texas Central Railway Company."

Senator Hall moved a call of the senate.
Senator Brown moved the previous question.
Previous question seconded.

Main question ordered, which being "Shall the bill pass,
174 notwithstanding the objections of his excellency the governor?"

Yeas and nays taken.

Yeas—Mr. President, Alford, Baker, Bell, Bowers, Broughton, Clark, Cole, Dohoney, Douglass, Flanagan, Ford, Gaines, Mills, Parsons, Pickett, Pridgen, Pyle, Rawson, Ruby, Shannon—21.
Nays—Evans, Hall, Hertzberg, Priest—4.
Absent—Fountain, Latimer, Pettit, Saylor—4.
The senate, on reconsideration, passed the bill.

THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, Allison Mayfield, secretary of state of the State of Texas, do hereby certify that the within and foregoing are true copies of extracts from the senate journal of the twelfth legislature of the State of Texas, which convened in the city of Austin, April 26th, 1870, and adjourned August 15, 1870.

Witness my official signature and the seal of State, affixed at the city of Austin, this the 21st day of January, A. D. 1896.

(Signed) ALLISON MAYFIELD,
Secretary of State.

Copy.

Defendant next introduced a duly authenticated transcript from the books of the comptroller's office showing the account of the Houston & Texas Central Railway Company respecting the loan described in plaintiff's petition to the Houston & Texas Central Railway Company as said account stood on the books of the comptroller's department on the first day of May, 1870, as follows, to wit:

Houston & Texas Central Railroad Company.

1857.				1858.				
April 14	To James H. Raymond, school fund.	76	150,000.00	Mar. 1	By dep. warr't No. 1.....	3227	162	7,915.00
Oct. 28	" " "	136	60,000.00	Mar. 1	" " 1.....	3328	"	1,240.00
1858.				April 14	" " S.....	3343	164	3,000.00
May 31	To sundries.....	211	60,000.00					
July 6	"	"	30,000.00					

Date of loan.			Principal.	Interest.	Date of payment.			Principal.	Interest.
1857.					1858.				
April 13	To journal.....	76	150,000.00		Mar. 1	By w't No. 3327.....	162	.....	7,915.00
Oct. 28	"	136	60,000.00		Mar. 1	" " 3328.....	"	.....	1,240.00
1858.					Apr. 14	" " 3343.....	164	3,000.00	
May 31	"	211	60,000.00		Nov. 4	" " 3532.....	230	1,200.00	
July 6	"	211	30,000.00		1859.				
1859.					Feb. 12	" " 3573.....	250	.....	9,000.00
Feb. 23	"	254	30,000.00		Feb. 12	" " 3574.....	"	.....	3,600.00
June 15	"	324	30,000.00		Feb. 12	" " 3575.....	"	.....	1,350.00
July 22	"	"	30,000.00		Feb. 12	" " 3576.....	"	.....	1,350.00
Aug. 2	"	"	30,000.00		Feb. 12	" " 3577.....	"	.....	1,168.76
Aug. 20	"	"	30,000.00		Feb. 28	" " 3601.....	251	.....	25.00
1864.					April 12	" " 3648.....	261	3,000.00	
Dec. 31	To interest.....	167	.....	153,575.56	May 31	" " 3685.....	267	1,200.00	
" "	To balance.....	.....	.....	2,000.00	July 5	" " 3802.....	299	600.00	
					Nov. 1	" " 26.....	337	1,200.00	

177

Date of loan.			Principal.	Interest.
Dec'r 31 1865.	To balance		432,000.00	
Mar. 1	To interest	173		25,920.00
1866. April —	" "	198		25,920.00
			432,000.00	51,840.00

178

Date of payment.			Principal.	Interest.
1860. Dec'r 31	To balance		432,000.00	
Dec'r 31 1866.	Balance			2,000.00
May 31	Bal. to Led. C	199	432,000.00	49,840.00
			432,000.00	51,840.00

Date of payment.			Principal.	Interest.
1860. Feb. 13	By w't No. 82	347	600.00	
Mar. 1	" " 105	352		24,152.45
Ap'l 13	" " 123	368	3,000.00	
May 31	" " 172½	377	1,200.00	
June 15	" " 186	"	600.00	
July 10	" " 242	382	600.00	
Aug't 31	" " 328	414	1,800.00	
1864. Jan'y 20	" " 905	105		23,466.76
Mar. 30	" " 907	109		6,670.00
April 19	" " 908	110		15,009.92
April 19	" " 909	110		4,000.00
July 13	" " 915	136		31,660.69
Aug't 20	" " 918	147		2,000.00
Aug't 24	" " 922	"		22,966.98
Dec'r 31	To balance		432,000.00	
			450,000.00	155,575.56

Houston & Texas Central railroad.

Dr.			Principal.	Interest.	Cr.		Principal.	Interest.
1866.					1866.			
Octo. 31	To bal. from Led. B.....	54	432,000.00	49,840.00	Dec'r 31	By S. F. D. W. No. 559.....	.....	2,855.00
March 1	To in'st on R. R. B.....	82	.....	25,920.00	1867.			
1868.					Jan. 1	By D. W. No. 861.....	.....	3,375.00
July 31	To int. on R. R. B.....	188	.....	25,920.00	April 23	" " " 1497.....	.....	10,830.00
1869.					May 4	" " " 1598.....	.....	10,500.00
March 1	" " "	141	.....	25,920.00	May 24	" " " 16 ".....	.....	4,500.00
1870.					Dec. 31	" " " 22149.....	.....	6,230.00
"	" " "	302	.....	25,920.00				

181 Journal "A." No. 3.

Page 76. COMPTROLLER'S OFFICE, *April*, 1857.

322 Houston & Texas Central railroad.
14 To James H. Raymond, treasurer, "general school fund:"
Am't loaned that road under the provisions of an act passed 13th August, 1856, to wit:
In U. S. bonds..... 141,000.00
In specie..... 9,000.00

For which their bonds were substituted bearing 6%, payable 10 years from 14th April, 1857, the date of said loan..... 150,000.00

Page 136. COMPTROLLER'S OFFICE, *October*, 1857.

322 Houston & Texas Central railroad.
To James H. Raymond, treasurer, "school fund:"
Am't loaned said company 28th October, 1857, to wit:
In U. S. bonds..... 56,000.00
In specie..... 4,000.00

60,000.00

Page 162. COMPTROLLER'S OFFICE, *March*, 1858.

4–1 Cash accs. to sundries.
322 "Houston & Texas Central Railway Co.:"
Am't of interest on bond for $150,000.00 paid in by S. M. Swenson on acc't of said company March 1, '58, from 14th April, 1857, to
182 date, at 6%, and deposited in the treasury, as per warrant No. 3327..... 7,915.00
Am't of interest on bond for $60,000.00 also paid in by S. M. Swenson on acc. of same company from 28th October, 1857, to March 1, '58, at 6 %, and deposited in the treasury, as per warrant No. 3328..... 1,240.00

Page 164. COMPTROLLER'S OFFICE, *April*, 1858.

1–4 Cash accs. to sundries.
322 "Houston & Texas Central Railway Company:"
Am't of 2% sinking fund paid in by S. M. Swenson on their acc't on bond — $150,000.00, dated April 14, '57, as per deposit warrant No. 3343, dated April 14, '58..... 3,000.00

No. 5.

Page 211. COMPTROLLER'S OFFICE, *August*, 1858.

322	Houston & Texas Central Railway Company to sundries.			
	James H. Raymond, treasurer, "school fund, in U. S. bonds:			
	Am't loaned said company May 31, '88, from this fund on their two bonds of $30,000.00 each.....	58,000.00		
	Am't loaned said company July 6, '58, from same fund on their bond for $30,000.00.....	29,000.00		
			87,000.00	
	James H. Raymond, treasurer, "school fund, in specie:"			
	Am't loaned said company May 31, '58, from this fund to complete the loans of this date.....	2,000.00		
	" " " of July 6, '58....	1,000.00		
			3,000.00	
				90,000.00

183

Page 230. COMPTROLLER'S OFFICE, *November*, 1858.

1–4	Cash accs. to sundries. School fund.		
322	"Houston & Texas Central Railway Co.:"		
	Am't of 2% sinking fund paid by Swenson & Swisher for said company on their bond executed 28th Oct., 1857, for $60,000.00, as per warrant No. 3532, Nov. 4, '58.....		1,200.00

Page 250. COMPTROLLER'S OFFICE, *February*, 1859.

1–4	Cash accs. to sundries. School fund.		
	Houston & Texas Central Railway Co.:		
	Am't of 12 mos.' int. on bond dated March 25, '57, for $150,000.00, due March 1, '59, deposited by Swenson and Swisher, Feb'y 12, '59, as per warrant No. 3573.....		9,000.00
	Am't of 12 mos.' int. on bond dated Sept. 23, '57, for $60,000, due same time, deposited as above, as per warrant No. 3574.....		3,600.00
	Am't of 9 mos.' int. on bond dated Jan'y 28, '58, for $30,000, from June 1, '58, to March 1, '59, deposited as above, as per warrant No. 3575.....		1,350.00
	Am't of 9 mos.' int. on bond for $30,000.00, dated Feb. 28, '58, from June 1, '58, to March 1, 59, deposited as above, as per warrant No. 3576.....		1,350.00
	Am't of seven mos. & 25 days' int. on bond for $30,000, dated Feb. 23, '58, from July 6, '58, to March 1, '59, deposited as above, as per warrant No. 3577.....		1,168.76

184 No. 5.

Page 251. COMPTROLLER'S OFFICE, *February*, 1859.

1–4 Cash accs. to sundries. School fund.
322 " Houston & Texas Central Railroad Company:"
Am't of 5 days' int. on bond dated Jan. 25, '59, for $30,000.00, from Feb. 23, '59, to March 1, '59, and deposited Feb. 28, '59, as per warrant No. 3601.. 25.00

Page 254. COMPTROLLER'S OFFICE, *February*, 1859.

348 Sundries to C. H. Randolph, treasurer, "school fund, in bonds:"
322 Houston & Texas Central Railway Company:
Am't loaned said company in U. S. 5% bonds on their bond for $30,000.00, dated Feb. 23, '59.... 29,000.00

347 Sundries to C. H. Randolph, treasurer, "school fund, in specie."
322 Houston & Texas Central Railway Company:
Am't loaned this company in specie to complete the above loan of $30,000.00..... 1,000.00

Page 261. COMPTROLLER'S OFFICE, *April*, 1859.

1–4 Cash acc't to sundries. School fund.
322 Houston & Texas Central Railway Company:
Am't of 2% sinking fund paid in by Swenson & Swisher, Apr. 12, '59, as per warrant No. 3648.. 3,000.00

Page 267. COMPTROLLER'S OFFICE, *May*, 1859.

1–4 Cash accs. to sundries.
322 Houston & Texas Central Railway Co.:
Am't of 2 % sinking fund paid in by them through Messrs. Swenson & Swisher on loan of $60,000.00 made May 31, '58, paid in May 31, '59, as per deposit warrant No. 3685..... ..... 1,200.00

185

Page 299. COMPTROLLER'S OFFICE, *July*, 1859.

Cash accs. to sundries.
Houston & Texas Central Railway Co.:
Am't of 2 % sinking fund paid in July 5, '59, on loan of July 6, '58, for $30,000, and deposited as per w't No. 2802..... 600.00

No. 6.

Page 324. COMPTROLLER'S OFFICE, *August*, 1859.

347 Sundries to C. H. Randolph, treasurer, "school fund, in specie."
322 Houston & Texas Central Railway Co.:
Am't of specie loaned this company on their four several bonds for $30,000.00 each, 15th and 22nd July and 2nd and 20th August, 1859..... 4,000.00

Sundries to C. H. Randolph, treasurer, "school fund, in bonds."
Houston & Texas Central Railway Co.:
Am't of U. S. bonds loaned said company on their four several bonds for $30,000.00 each, dated respectively May 14, '59; June 22, '59; July 20, '59, and July 29, '59..... ..... 116,000.00

186

Page 337. COMPTROLLER'S OFFICE, *November*, 1859.

Cash acc., "2 % sinking fund."
To Houston & Texas Central Railway Co.:
Am't deposited by Swenson & Swisher Nov. 1, '59, as per warrant No. 26..... 1,200.00

Page 347. COMPTROLLER'S OFFICE, *February*, 1860.

3 Cash acc., "2 — sinking fund."
322 To Houston & Texas Central Railway Co.:
Am't of 2 % sinking fund paid in by S. M. Swenson Feb. 23, '60, as per warrant No. 82 on loan of $30,000 made Feb. 23, '59... ..... 600.00

Page 352. COMPTROLLER'S OFFICE, *March*, 1860.

5 Cash acc., "school fund, in specie," to sundries (etc.)
Houston & Texas Central Railway Co.:
Am't deposited March 16, '60, as per warrant No. 105, being interest at 6 % to March 1, '60, on the following loans, viz.:

Loan of	April	13, '57,	of	$150,000,	one year.....	$9,000.00
"	" Oct.	28, '57,	of	60,000	"	3,600.00
"	" May	31, '58,	of	60,000	"	1,800.00
"	" "	" "	"	60,000	"	1,800.00
"	" July	6, '58,	"	60,000	"	1,800.00
"	" Feb.	23, '59,	"	60,000	"	1,800.00
"	" June	15, '59,	"	60,000	259 days.....	1,273.77
"	" July	23, '59,	of	60,000	222 "	1,091.80
"	" Aug.	2, '59,	of	60,000	211 "	1,037.70
"	" Aug.	20, '59,	of	60,000	193 "	949.18
						$24,152.45

187 No. 7.

Page 368. COMPTROLLER'S OFFICE, *April*, 1860.

3 Cash acc., "2 % sinking fund," to sundries.
322 Houston & Texas Central Railway Co.:
Am't of 2 % sinking fund paid in by S. M. Swenson Ap'l 12, '60, on loan of Ap'l 13, '57, for $150,000, as per warrant No. 123..... 3,000.00

Page 377. COMPTROLLER'S OFFICE, *June*, 1860.

3 Cash acc., "2 % sinking fund," to sundries.
322 Houston & Texas Central Railway Co.:
Am't paid in by S. M. Swenson June 12, '60, as per warrant No. 172½, on loan of May 31, '58, for $60,000.00 ..... 1,200.00
Am't paid in by A. Groesbeck, June 18, '60, as per warrant No. 186 on loan of June 15, '60, for $30,000.00 ..... 600.00

Page 382. COMPTROLLER'S OFFICE, *July*, 1860.

3 Cash acc., "2 % sinking fund," to sundries.
322 Houston & Texas Central Railway Co.:
Am't paid in by John Bremond on loan of July 6, '58, for $30,000, as per warrant No. 242, dated July 10, '60 ..... 600.00

Page 414. COMPTROLLER'S OFFICE, *August*, 1860.

3 Cash, "2 % sinking fund."
322 To Houston & Texas Central Railway Co.:
Am't paid in by John Bremond on loans of July 22, '59, August 2, '59, and August 20, '59, for $30,000.00 each and deposited August 31, '60, as per warrant No. 328 ..... 1,800.00

188 Journal B. No. 8.

Page 105. COMPTROLLER'S OFFICE, AUSTIN, *January*, 1864.

506 C. H. Randolph, school fund, Dr. to—
322 Houston & Texas Central Rl. Rd. Comp.:
For amount in State treasury warrant paid by said company on acc. of interest on their bonds, as per deposit warrant No. 905 ..... 23,466.76 23,466.76

Page 109. COMPTROLLER'S OFFICE, AUSTIN, *March*, 1864.

506 30. C. H. Randolph, school fund, Dr. to—
Houston & Texas Central Rl. Rd. Comp.:
322 For amount in State money paid into treasury on acc. of interest on railroad bonds as per D. W. No. 907.. 6,670.00 6,670.00

Page 110. COMPTROLLER'S OFFICE, AUSTIN, *April*, 1864.

506 C. H. Randolph, school fund acc., Dr. to—
Houston & Texas Central Rl. Rd. Co.:
322 19. For am't paid in State warrants on acc. interest on r'lr'd bonds as per D. W. No. 908 ..... 15,009.92
322 19. For am't paid in State warrants on acc. interest on r'lr'd bonds as per D. W. No. 909 ..... 4,000.00
19,009.92

Page 136. COMPTROLLER'S OFFICE, AUSTIN, *July*, 1864.

508 C. H. Randolph, school fund, Dr. to sundries:
For the following funds paid on acc. of interest on r'lr'd bonds in July:

189

		No. D. W.	State w'ts fundable 8% b.	State w'ts fundable 6% b.	Total.
322	13. Houston & Texas Central Railroad Co.....	915	31,618.69	42.00	31,660.69

Page 147. COMPTROLLER'S OFFICE, AUSTIN, ——, 1864.

508 C. H. Randolph, school fund, Dr. to sundries.
For the following funds deposited to credit of school fund during the qr. ending 31st inst.:

		No. D. W.	State treas'y warr'ts fundable in— 8 % bonds.	6 % bonds.	Total.
322	20. Houston & Tex. Central Rl. Rd. for int. on bonds.....	918	2,000.00	....	2,000.00
322	24. Houston & Tex. Central Rl. Rd. for int. on bonds.....	922	22,569.98	397.00	22,966.98

Page 167. COMPTROLLER'S OFFICE, AUSTIN, *Dec'r*, 1864.

363 Sundries Dr. to interest on railroad bonds.
For interest at 6 % on bonds from date of same to March 1, '64:
322 Houston & Texas Central railroad..... 153,575.56

No. 9.

Page 173. COMPTROLLER'S OFFICE, ——, *March*, 1865.

363 1. Sundries Dr. to interest on railroad bonds:
322 Houston & Texas Central Rl. Rd. for int. at 6 % on $432,000 from March 1, '64, to March 1, '65. 25,920.00

Page 198. COMPTROLLER'S OFFICE, AUSTIN, *April*, 1866.

363 Sundries Dr. to interest on r'lr'd bonds.

190

322 Houston & Texas Central railroad for 6 % interest on $432,000 for 1 year to Mar. 1st, 1866..... 25,920.00

Page 199. COMPTROLLER'S OFFICE, AUSTIN, *May*, 1866.

568 Balance to Ledger C Dr. to sundries.
For balance at debit of the following accounts respectively transferred to Ledger C, viz:

322 Houston & Texas Central railroad:
Bal. principal Mar. 1st, 1866.. ..... 432,000.00
Bal. interest Mar. 1st, 1866..... 49,840.00
481,840

Journal "C." No. 10.

Page 54. COMPTROLLER'S OFFICE, ——, *October*, 1866.

508 Sundries Dr. to balances from Led. B.

57. Houston & Texas Central railroad:
For bal. principal due on bonds Mar. 1, '66, transferred from Led. B..... 432,000.00
For bal. interest due on bonds Mar. 1, '66, transferred from Led. B..... 49,840.00
481,840.00

Page 59. COMPTROLLER'S OFFICE, AUSTIN, *December*, 1866.

13. M. H. Royston, school fund, in specie and currency, Dr. to sundries.
For amount deposited in State treasury to credit of "school fund acc." during the month ending December 31st, 1866, viz:

191

		No. of D. W.	Specie.	Total
57	14. Houston & Texas Central Railroad Company.....	5	2,855.00	2,855.00

Page 61. COMPTROLLER'S OFFICE, AUSTIN, TEXAS, *January*, 1867.

13 M. H. Royston, "school fund," in specie and currency, Dr. to sundries.
For amount deposited in State treasury to credit of school fund acc. during the month ending January 31, '67, viz:

		No. of D. W.	Specie.	Total.
57	1. Houston & Texas Central R. road..	8	3,375.00	3,375.00

Page 82. COMPTROLLER'S OFFICE, AUSTIN, TEXAS, *March*, 1867.

533 Sundries Dr. to "interest on railroad bonds."

57 Houston & Texas Central railroad:
For interest on $432,000.00 at 6 % for 1 year to March 1st, 1867..... 25,920.00

Page 97. COMPTROLLER'S OFFICE, AUSTIN, TEXAS, *April*, 1867.

13 M. H. Royston, school fund, in specie and U. S. currency, Dr. to sundries.

57 23. Houston & Texas Central R. road:
For interest on bonds to March 1, '67, in specie, D. W. No. 14..... 10,830.00

192 No. 11.

Page 98. COMPTROLLER'S OFFICE, AUSTIN, TEXAS, *May*, 1867.

13 M. H. Royston, "school fund," Dr. to sundries.
For specie deposited to cr. school fund, viz:
57 4. Houston & Texas Central R. road:
For int. on bonds to Mar. 1, '67, per
D. W. No. 15..... .... 10,500.00
57 24. Houston & Texas Central R. road:
For int. on bonds to Mar. 1, '67, per
D. W. No. 16.... .... 4,500.00
15,000.00

Page 149. COMPTROLLER'S OFFICE,
AUSTIN, TEXAS, *December*, 1867.

39 John T. Allen, Tr., school fund, in specie and currency, Dr. to sundries.
57 Houston & Texas Central Railroad Co.:
For part interest due on bond prior to March 1st,
1866, in specie, per D. W. No. 22..... .... 6,230.00

Page 188. COMPTROLLER'S OFFICE, AUSTIN, TEXAS, *July*, 1868.

533 Sundries Dr. to interest on r'lr'd bonds.
57 The Houston & Texas Central railroad:
For 6 % interest on $432,000.00 for 1 year to March
1st, 1868.... .... 25,920.00

193

Page 241. COMPTROLLER'S OFFICE,
AUSTIN, TEXAS, *February*, 1869.

533 Sundries Dr. to interest on r'lr'd bonds.
57 Houston & Texas Central railroad:
For 6% interest on $432,000.00 for 1 year to Mar.
1st, 1869..... ..... 25,920.00

Page 302. COMPTROLLER'S OFFICE,
AUSTIN TEXAS, *March*, 1870.

533 Sundries Dr. to interest on railroad bonds.
57 Houston & Texas Central railroad:
For 6% interest on $432,000.00 for 1 year to Mar.
1st, 1870..... ... . 25,920.00

COMPTROLLER'S OFFICE, AUSTIN, TEXAS.

I, R. W. Finley, comptroller of public accounts of the State of Texas, do hereby certify that the eleven foregoing sheets are true copies of the accounts of and entries concerning the Houston & Texas Central Railroad Company, as appears on the books of this department up to May first, 1870, inclusive. Sheets No. 1 and No. 2 are true copies of the account of said railroad company appearing on Ledger "A" and Ledger "C;" the remaining sheets are true copies of the journal entries on pages and dates named thereon. Sheets

No. 3, 4, 5, 6, and 7 show entries appearing on Journal "A," sheets No. 8 and 9 on Journal "B," and sheets 10 and 11 on Journal "C."

194 Witness my hand and official seal this the 18th day of February, A. D. 1895.

[L. S.] R. W. FINLEY,
Comptroller of Public Accounts of the State of Texas.

COMPTROLLER'S OFFICE, AUSTIN, TEXAS.

I, J. R. Curl, acting comptroller of public accounts of the State of Texas, do hereby certify that the foregoing eleven sheets are true copies of the accounts of and entries concerning the Houston & Texas Central Railroad Company, as appears on the books of this department up to May 1, 1870, inclusive. Sheets No. 1 and No. 2 are true copies of the account of said railroad company appearing on Ledger "A" and Ledger "C;" the remaining sheets are true copies of the journal entries on pages and dates named thereon. Sheets Nos. 3, 4, 5, 6, and 7 show entries appearing on Journal "A," sheets No. 8 and 9 on Journal "B," and sheets No. 10 and 11 on Journal "C."

Witness my hand and official seal this the 16th day of January, A. D. 1896.

[SEAL.] J. R. CURL,
Act'g Comptroller of Public Accounts.

III.

The defendant next introduced in evidence a duly authenticated transcript from the books of the comptroller's office showing account of Washington County Railroad Company respecting the loan described in the plaintiff's petition to the Washington County Railroad Company, as said account stood on the books in the com-troller's department on the first day of May, 1870, as follows, to wit:

324. Dr. Washington County railroad.

Date of loan.			Principal.	Interest.
1859.				
June 6	To journal	324	66,000.00	
" "	" "	"		
Dec. 31	" interest	167		18,445.85
			66,000.00	18,445.85
Dec. 31	To balance		64,680.00	
1865.				
Mar. 1	" interest	173		3,880.80
1866.				
Apr'l —	" "	198		2,221.02
May 31	" "	199		322.88
			64,680.00	6,424.70

Washington County railroad. Cr.

Date of pay't.			Principal.	Interest.
1860.				
Feb. 28	By D. W. No. 85	348		2,899.45
June 6	" " 180	377	1,320.00	
1864.				
July 11	" " 914	136		12,755.41
Aug. 25	" " 923	147		2,790.99
Dec. 31	" balance		64,680.00	
			66,000.00	18,445.85
1865.				
May 11	By D. W. No. 928	182		3,880.80
" "	" " 929	"	27,663.00	
1866.				
May 31	Bal. to Led. C.		37,017.00	2,543.90
			64,680.00	6,424.70

4938

59. LEDGER C.

DR. Washington County railroad.

			Principal.	Interest.
1866.				
Oct. 31	To bal. from Led. B.	54	37,017.00	2,221.02
1867.				
March 1	" " "	82	.....	322.88
" "	" int. on R. R. bonds....	"	.....	2,221.02
1868.				
July 31	" " " " ...	188	.....	2,221.02
1869.				
March 1	" " " "	241	.....	2,221.02
1870.				
March 1	" " " "	302	.....	2,221.02

LEDGER C.

Washington County railroad. CR.

			Principal.	Interest.
1867.				
January 1	By D. W. No. 7.....	61	.....	317.98

197

Page 324. COMPTROLLER'S OFFICE, *August*, 1859.

347 Sundries to C. H. Randolph, treasurer, "school fund, in specie."
"Washington County Railwa- Co.:"
Am't of specie loaned said company from this fund on their bond for $66,000, June 6, '59..... $2,000.00
Sundries to C. H. Randolph, treasurer," school fund, in bonds."
Washington County Railway Co.:
Am't of U. S. bonds loaned said company on their bond for $66,000, dated May 23, '59..... 64,000.00

Page 348. COMPTROLLER'S OFFICE, *February*, 1860.

5 Cash ac., "school fund, in specie," to sundries.
324 Washington County Railway Co.:
Am't of interest paid in by S. M. Swenson on ac. of said company Feb. 28, '60, as per warrant No. 85 on loan of $66,000, made June 6, '59, to March 1, '60, 268 days..... 2,899.45

Page 377. COMPTROLLER'S OFFICE, *June*, 1860.

Cash ac., "2 % sinking fund to sundries."
Washington County Railway Co.:
Am't paid in by I. P. Key, June 15, '60, as per warrant No. 180 on loan of June 6, '59, for $66,000. ..... 1,320.00

198

Page 136. COMPTROLLER'S OFFICE, AUSTIN, *July*, 1864.

508 C. H. Randolph, school fund, Dr. to sundries.
For the following funds paid on ac. of interest on r'lr'd bonds in July:

# D. W.	State wts. fund. 8 % b.	St. wts. fd. 6 % b.	Total.
914	11,563	1,192.00	12,755.41

324 11. Washington County Railroad Company.

Page 147. COMPTROLLER'S OFFICE, AUSTIN, *August*, 1864.

508 C. H. Randolph, school fund, Dr. to sundries.
For the fol'g funds deposited to credit of school fund during qr. ending 31st inst.:

No. D. W.	State treas'y warra'ts fundable— In 8 % bonds.	In 6 % bonds.	Total.
923	1,140.99	1,650.00	2,790.99

324 25. Washington County Rl. Rd.

Page 167. COMPTROLLER'S OFFICE, AUSTIN, *Dec'r*, 1864.

363 Sundries Dr. to interest on R. R. bonds.
For interest at 6 % on bonds from date of same to March 1st, 1864:
324 Washington County railroad..... .. 18,445.85

Page 173. COMPTROLLER'S OFFICE, AUSTIN, *March*, 1865.

363 Sundries Dr. to interest on R. R. bonds.
324 Washington County R. Rd.:
For interest at 6 % on 64,680 from Mar. 1, '64, to Mar. 1, '65..... 3,880.80
199

Page 198. COMPTROLLER'S OFFICE, AUSTIN, *April*, 1866.

363 Sundries Dr. to interest on R. R. bonds.
324 Washington County Rl. Rd.:
For 6 % int. on $37,017.00 for 1 year to March 1st, 1866..... 2,221.02

Page 199. COMPTROLLER'S OFFICE, AUSTIN, *May*, 1866.

324 Washington County Rl. Rd. Dr. to interest on railroad bonds:
363 For interest on $27,663.00 from March 1st, 1865, to May 11th, 1865..... 322.88 322.88

Page 182. COMPTROLLER'S OFFICE, AUSTIN, *May*, 1865.

508 C. H. Randolph, school fund, Dr. to Washington County railroad:

		(S. wts. funl. 8 %.)	Total.
324	For am't deposited May 11th, '65, to pay int. on bonds to Mar. 1, '65, as per D. W. # 928.....	3,880.80	3,880.80
	For am't deposited May 11, '65, to pay on ac. of principal of bonds in the following funds, viz:		
	No. D. W. S. warrants, 6 %.		
	On ac. of principal... 929 25,298.20	2,364.80	27,663.00
	25,298.20	6,245.00	31,543.80

200

Page 61. COMPTROLLER'S OFFICE, AUSTIN, TEXAS, *Jan'y*, 1867.

13 M. H. Royston, "school fund," in specie & currency, Dr. to sundries:
For am't deposited in State treasury to credit of "school fund" ac. during the month ending Jan'y 31st, 1867, viz:

No. of D. W.	Specie.	U. States non-int. cor'y.	Total.
7	317.98	.....	317.98

59 1. Washington County Railroad Company.

Page 82. COMPTROLLER'S OFFICE, AUSTIN, TEXAS, *March*, 1867.

533 Sundries Dr. to "interest on R. R. bonds."
59 Washington County railroad:
For int. on $37,017.00 at 6 % for 1 yr. to March 1st, 1867..... 2,221.02

59 Washington County railroad Dr. to balances from Ledger "B:"

508 For int. from March 1st to May 11th, 1865, on $27,663.00, transferred to Ledger "C"..... ... 322.88

Page 188. COMPTROLLER'S OFFICE, AUSTIN, TEXAS, *July*, 1868.

533 Sundries Dr. to interest on R. R. bonds.
59 Washington County railroad:
For 6 % on $37,017.00.... ..... 2,221.02

201

Page 241. COMPTROLLER'S OFFICE, AUSTIN, TEXAS, *Febr'y*, 1869.

533 Sundries Dr. to int. on R. R. bonds.
59 Washington County railroad:
For 6 % int. on 37,017.00.... ..... 2,221.02

Page 302. COMPTROLLER'S OFFICE, AUSTIN, TEXAS, *March*, 1870.

533 Sundries Dr. to interest on railroad bonds.
59 Washington County railroad:
For 6 % int. on $37,017 for 1 year to March 1st, 1870..... ... . 2,221.02

COMPTROLLER'S OFFICE, AUSTIN, TEXAS.

I, R. W. Finley, comptroller of public accounts of the State of Texas, do hereby certify that the four foregoing sheets, numbered 1, 2, 3, & 4, are true copies of the accounts of entries concerning the Washington County railroad up to May 1st, 1870, as appears on books of this department, sheet number 1 being true copies of the accounts of said railroad Co. appearing on Ledger- "A" and "C." Sheets numbers 2, 3, & 4 are true copies of the journal entries appearing on Journals "A," "B," and "C" on dates and pages named thereon.

Witness my hand and official seal this the 13th day of Feb'y, A. D. 1895.

[SEAL.] (Signed) R. W. FINLEY,
Comptroller of Public Accounts of the State of Texas.

202 COMPTROLLER'S OFFICE, AUSTIN, TEXAS.

I, Jas. R. Curl, acting comptroller of public accounts of the State of Texas, do hereby certify that the four foregoing sheets, numbered 1, 2, 3, & 4, are true copies of the accounts of and entries concerning the Washington County railroad up to and including May 1st, 1870, as appears on the books of this department, sheet number 1 being true copies of the account of said railroad Co. appearing on Ledgers "A" and "C." Sheets numbered 2, 3, & 4 are true copies of the journal entries appearing on Journals "A," "B," and "C" on dates and pages named thereon.

Witness my hand and official seal this 16th day of January, A. D. 1896.

(Signed) J. R. CURL,
[SEAL.] *Acting Comptroller of Public Accounts of the State of Tex.*

The defendant next introduced in evidence the following certificate by the comptroller of public accounts of the State of Texas under his seal of office:

I, R. W. Finley, comptroller of public accounts of the State of Texas, do hereby certify that the following payments were made by or for the Houston & Texas Central Railway Company on account of school fund loan on dates set opposite each amount since May 1st, 1870, as shown by the records of this office:

203

Date.	Deposit.	Principal.	Interest.
Oct. 26, 1870	Deposited	6,573.24	19,719.73
May 1, 1871	"	6,507.51	19,522.53
Nov. 3, "	"	6,442.43	19,327.28
May 7, 1872	"	6,378.01	19,134.03
Nov. 9, "	"	6,314.23	18,942.68
May 8, 1873	"	6,251.09	18,753.27
Nov. 7, "	"	6,188.58	18,565.24
May 1874	"	6,126.69	18,380.07
Nov. "	"	6,065.42	18,196.28
May 1875	"	6,004.77	18,014.31
Nov. "	"	5,944.72	17,834.17
May 1876	"	5,885.27	17,655.82
Nov. "	"	5,826.42	17,479.27
May 1877	"	5,768.15	17,304.47
Nov. "	"	5,710.48	17,131.43
May 1878	"	5,653.37	16,960.12
Nov. "	"	5,596.84	16,790.52
May 1879	"	5,540.87	16,622.61
Nov. "	"	5,485.46	16,456.38
May 1880	"	5,430.60	16,291.82
Nov. 9, "	"	5,376.30	16,128.90
May 9, 1881	"	5,322.53	15,967.61
Nov. 10, "	"	5,269.31	15,807.94
May 8, 1882	"	5,216.62	15,649.86
Nov. 9, "	"	5,164.45	15,490.36
May 9, 1883	"	5,112.80	15,338.43
Nov. 8, "	"	5,061.68	15,185.04
May 9, 1884	"	5,011.07	15,033.22
Nov. 9, "	"	4,960.95	14,882.86

204

Date.	Deposit.	Principal.	Interest.
May 8, 1885	Deposited.....	4,911.34	14,734.03
Nov. 9, "	"	4,862.23	14,586.69
May 7, 1886	"	4,813.61	14,440.82
Nov. 9, "	"	4,765.47	14,296.42
May 9, 1887	"	4,717.82	14,153.45
Nov. 8, "	"	4,670.64	14,011.92
May 8, 1888	"	4,623.93	13,871.80
Nov. 9, "	"	4,577.69	13,733.04
May 9, 1889	"	4,531.92	13,598.45
Nov. 8, "	"	4,486.59	13,457.09
May 9, 1890	"	4,441.72	13,325.20
Nov. 8, "	"	4,397.31	13,191.94
May 8, 1891	"	4,353.34	13,060.02
Nov. 9, "	"	4,309.81	12,929.42
May 9, 1892	"	4,266.71	12,800.13
Nov. 7, "	"	4,224.04	12,672.13
May 8, 1893	"	4,181.80	12,545.40
Nov. 9, "	"	2,062.68	

In witness whereof I hereunto set my hand and official seal the 20th day of May, 1895.

[SEAL.] (Signed) R. W. FINLEY,
Comptroller.

V.

The defendant next introduced in evidence the following certificate by the comptroller of public accounts of the State of Texas under his seal of office:

I, R. W. Finley, comptroller of public accounts of the State of Texas, do hereby certify that the following payments were
205 made by or for the Washington County R. R. Co. on account of school fund loan on date set opposite each amount since May 1, 1870, as shown by the records of this office:

Date.	Deposited.	Principal.	Interest.
Oct. 6, 1870	Deposited.....	1,035.63	3,106.90
May 1871	"	1,030.88	3,092.34
Nov. 3, 1871	"	1,017.73	3,053.20
May 7, 1872	"	1,007.55	3,022.67
Nov. 9, "	"	997.48	2,994.45
May 8, 1873	"	987.50	2,962.52
Nov. 7, "	"	977.63	2,932.90
May 7, 1874	"	967.85	2,903.56
Nov. 6, "	"	958.18	2,874.53
May 7, 1875	"	948.59	2,845.79
Nov. 9, "	"	939.10	2,817.33
May 5, 1876	"	929.71	2,789.16
Nov. 6, "	"	920.42	2,761.27
May 10, 1877	"	911.21	2,733.65
Nov. 10, "	"	902.00	2,706.31
May 10, 1878	"	893.08	2,679.25
Nov. 9, "	"	884.15	2,652.46
May 1, 1879	"	875.31	2,625.93

In witness whereof I hereunto set my hand and official seal this the 20th day of May, 1895.

[SEAL.] (Signed) R. W. FINLEY,
Comptroller.

VI.

206 The defendant next introduced in evidence a copy, certified to by the comptroller of public accounts of the State of Texas under his official seal, of a written protest filed by him upon the date of each of the payments subsequent to the first day of May, 1870, shown by above certificates, each and all of said protests being substantially as follows, differing only in date of filing by the comptroller and the amount of payment referred to:

AUSTIN, *November 1st*, 1871.

To the Hon. A. Bledsoe, comptroller of the State of Texas.

SIR: On the 26th of October, 1870, the Houston & Texas Central Railway Company filed a protest against your action in refusing to allow the credit of $152,864.55 claimed by the company on the loan of the special school fund of the State to said company and to the Washington County Railroad Company; that the credit so claimed was entered on the books of your office and was allowed by special act of the legislature of the 15th of August, 1870, and previous legislative acts. The company has again demanded that said credit, and also the excess of interest thereon paid by the company, should be allowed, which you have refused, and the governor threatens to ad-

vertise and sell the said railways unless the full sum of interest and sinking fund claimed by you to be due on the first of November, 1871, to wit $29,840.54 in gold, be paid by the company. The company deems that the action of the governor and yourself *are* illegal and wrongful; but, having no adequate remedy to prevent damage resulting to their credit and property and to the interests of the public and the prosecution of their work, they are compelled to submit to the illegal demands so made. The company therefore again protests against your action and prays the sum demanded into the treasury under protest, as it has heretofore done, and it will claim a readjustment and repayment of the excess of interest now paid and all payments hereafter made without allow-
207 ance of said credit on said account. You will oblige me by acknowledging the receipt of this protest.

Respectfully,

For the H. & T. C. R'Y CO.,
By F. A. RICE, *Treasurer.*

Filed in comptroller's office Nov. 1, 1871.

Plaintiff's Evidence in Rebuttal.

1.

Plaintiff's counsel introduced evidence sufficient to establish the fact that the governor had given authority to the attorney general to institute this suit.

2.

It was agreed by both parties that the Washington County Railroad Company was merged into the Houston & Texas Central Railway Company in 1870 and was operated by the latter company until its property and affairs passed into the hands of receivers, in February, 1885, and it was operated by such receivers until April 10th, 1893, and passed with the other lines of the Houston & Texas Central Railway Company to Frederick P. Olcott by the foreclosure sale in 1888 and from Olcott to this defendant, organized under the articles of incorporation filed August first, 1889, and hereinbefore set forth.

It was proven that the Washington County Railroad Co. had no offices nor officers upon whom service could be had nor had actual existence as a corporation.

3.

Plaintiff next introduced F. R. Lubbock, who testified substantially and in effect:

208 That he was governor of Texas one term, from November, 1861, to November, 1863; that he left Texas in the spring of 1864 and went into the army in Louisiana, and thence to Richmond; that he knew the market cash value of the treasury warrants of Texas in 1862 and during the remainder of the war; that the market price of such treasury warrants issued during the war varied

at different times. They commenced depreciating, and in 1863 and 1864 there was little value attached to them; that while governor he was accustomed to sell warrants issued to him for his salary from time to time, and upon his retirement from office of governor, in November, 1863, he sold the warrants issued to him for his salary to Mr. Defoe, a druggist in Austin, for 10 cents on the dollar. He added: I suppose that was the market value of the warrants, as I got all in cash I could for them.

On quitting the governor's office he was assigned to military duty and cleaned up everything and went off.

(The evidence of said witness respecting the cash market value of such warrants and the sale of his own warrants was admitted over the objections of counsel for defendant, as shown by bill of exceptions No. 3.)

Witness further testified that there was a class of warrants issued during the war that were recognized by the State after the war. They were, as the witness remembers, issued during the war for defense of the frontier against the Indians, etc., before the war.

The State warrants issued generally for civil services and things of that kind during the war were not recognized. If any of them were ever paid, I did not know it. None them were paid while I was treasurer.

The plaintiff next introduced in evidence one of the bonds executed by the Houston & Texas Central Railway Company,
209 described and referred to in the plaintiff's petition as follows, to wit:

Houston and Texas Central Railway Company.

Bond.

Whereas the Houston and Texas Central Railway Company has applied to the board of school commissioners of the State of Texas, which board consists of the governor, comptroller, and attorney general of said State, for a loan, under the provisions of an act to provide for the investment of the special school fund in the bonds of railroad companies incorporated by the State, passed August 13, 1856, and "An act to amend the fourth section of an act for the investment of the special school fund," and has represented to said commissioners that the said company has completed in a good and substantial manner and furnished ready for actual use a continuous section of sixty miles of its road, commencing at the city of Houston and running thence to the interior, and that the said company has also graded an additional consecutive section of five miles of its said road ready for the cross-ties and other superstructures, commencing at the upper end of said sixty miles;

And whereas the said board of school commissioners have appointed a competent engineer, who have examined the road of said company and has made a full report upon the condition thereof under oath, and has also reported all matters pertaining to the business

of said company which he deemed useful to said commissioners in ascertaining the true condition of said road and said company; and whereas the said company has produced to said commissioners certificates from the clerks of the county courts of Austin and Grimes counties and an affidavit, made by the president of said company, showing that the road of said company is not subject to any lien whatever taking precedence of that to the State of Texas, and that the liens on said road are as follows: On the first fifty miles, first to the State of Texas for six thousand dollars per mile, and, second, a mortgage on the first twenty-five miles of said
210 road, subject to that of the State and made in favor of A. C. Flagg and C. E. Habicht, trustees, for the sum of one hundred and twenty-five thousand dollars, the said board of commissioners being fully satisfied that the said five miles of said road *has* been constructed and completed, and that said five miles *has* been graded as hereinbefore stated and in accordance with the provisions of the acts aforesaid, and that the last five miles of said road are not subject to any liens whatever other than the lien to be created by this obligation; they, the said board of commissioners, have drawn a warrant on the treasury of said State of Texas in favor of said company against the special school fund for the sum of $30,000, to be paid in the five (5) per cent. bonds of the United States belonging to said fund at their current value, including premium, should the same be above par value, but if not, then at par value:

Now, therefore, for and in consideration of the premises and of the sum of one dollar to the said company paid by the said commissioners, the said company hereby acknowledges itself to be justly indebted to the State of Texas in the sum of thirty thousand dollars, which amount the said company promises to pay to the State aforesaid, at the office of the treasurer thereof, in the city of Austin, ten years from the date hereof, with interest thereon at the rate of six per centum per annum, to be paid at the office of said treasurer on the first day of March in each year, for which annual payments of interest coupon bonds are hereto attached, and said company also promises to pay the said State, at the office of said treasurer, at the expiration of each year from the date hereof, two per cent. upon the said sum of thirty thousand dollars for the purpose of establishing a sinking fund to be applied towards the payment of said debt of thirty thousand dollars at its maturity, and the said company hereby assents and agrees that this bond and the coupon interest bonds hereto attached shall constitute a lien upon the road and chartered rights of their company,
211 including the road-bed, right of way, grading, bridges, iron rails, equipment and masonry, and upon all the stock subscribed for in said company, all the depots and depot stations, and all the property owned by said company as necessary for its business; that said lien shall have priority over all other claims against said company, and that the State of Texas, upon the execution of this bond and the coupon interest bonds hereto attached, and by virtue of the same, shall be invested with said lien or mortgage for the payment of said bonds and the interest thereon as the same becomes

due without the necessity of any deed, especial contract, or act of registration, and that the said State shall be invested with all other rights and privileges which are provided for in the two acts hereinbefore referred to and named, which said acts are made a part of this bond and the interest bonds hereto attached.

In testimony whereof the said company *has* caused their corporate seal to be hereto affixed, with the signature of their president, and have also caused the same to be countersigned by their secretary this fourteenth day of May, eighteen hundred and fifty-nine.

A. GROESBEEK, *Pres't.*

WM. RICE,
[SEAL.] By F. A. RICE, *Att'y.*

Attest: W. R. BAKER, *Sec'y.*

STATE OF TEXAS, }
Harris County. }

Before me, A. C. Davis, a notary public in and for the county of Harris, duly commissioned and qualified, this day came and personally appeared Abraham Groesbeek, president, and William R. Baker, secretary, of the Houston and Texas Railway Company, to me well known, and each for himself acknowledged that he has executed the foregoing bond in his official capacity for the purposes and considerations therein set forth.

212 Witness my hand and notarial seal, at office, in Houston, this fourteenth day of May, A. D. 1859.

A. C. DAVIS,
[SEAL.] *Not. Pub., H. C.*

THE STATE OF TEXAS, }
County of Grimes, }

Filed for record at 7½ o'clock a. m. on the 26th day of May, A. D. 1859, and recorded at 12 o'clock m. on the same day in Book A of said county mortgage records, on pages 99, 100, 101, and 102; to all of which I certify under my hand and seal of office, at office, in Anderson, this the 26th day of May, A. D. 1859.

G. M. MOONING,
[SEAL.] *Clerk County Court of said County.*

No. 11.

The Houston and Texas Central Railway Company promises to pay the State of Texas the sum of — dollars at the office of the treasurer of said State, in the city of Austin, on the — day of ——, A. D. 1869, being the interest on the annexed bond from the first day of March, 1889, to the — day of ——, A. D. 1869.

In testimony whereof the said company have caused their corporate seal to be hereto affixed and signed by their president, and have also caused the same to be countersigned by their secretary this 14th day of May, A. D. 1859.

A. GROESBEEK, *President.*

W. R. BAKER, *Secretary.*

No. 10.

The Houston and Texas Central Railway Company promise to pay to the State of Texas the sum of eighteen hundred dollars at the office of the treasurer of said State, in the city of Austin, on the first day of March, A. D. 1869, being the interest on the an-
213 nexed bond from the first day of March, 1868, to the first day of March, 1869.

In testimony whereof the said company have caused their corporate seal to be affixed and signed by their president, and have also caused the same to be countersigned by their secretary this 14th day of May, 1859.

A. GROESBEEK, *President.*

W. R. BAKER, *Secretary.*

Endorsed as follows: Filed for record at 6 o'clock p. m., May 16, A. D. 1859. Geo. W. Johnson, C. C., A. C. Z. W. Matthews, d'y.

Recorded at 9 o'clock a. m., May 21, A. D. 1859, in Book H of Deeds of Austin County Records, pages 292, 293, and 294, No. 106; all of which I certify, signing my name and affixing the impress of seal of county court of said county, at office, in the town of Bellville, this 21st day of May, A. D. 1859.

GEO. W. JOHNSON, *C. C. C., A. C.*
Z. W. MATTHEWS, *D'y.* [SEAL.]

Filed June 11, 1859, at 7 o'clock p. m., and recorded in Harris county record of deeds, Book V, pages 408, '9, '10.

Witness my hand and seal at Harris county court.

J. B. DART, *Clerk, H. C.,*
By J. BRASHEAR, *Dep'y.* [SEAL.]

Endorsed on face of bond: Edward Clark, governor of the State of Texas.

Filed Feb. 10, 1896.

JAS. P. HART, *Clerk.*

Plaintiff next introduced in evidence the bond executed by the Washington County Railroad Company to the State of Texas and described in plaintiff's petition, which, omitting the coupons, is as follows, to wit:

Washington County Railroad Company.

$66,000. *Bond.* $66,000.

Whereas the Washington County Railroad Company has
214 applied to the board of school commissioners of the State of Texas, which board consists of the governor, comptroller, and attorney general of said State, for a loan under the provisions of "An act to provide for the investment of the special school fund in the bonds of the railroad companies incorporated by the State of Texas," passed August 13th, A. D. 1856, and the act "for the relief

of the Washington County Railroad Company," approved January 28th, 1858, and has represented to said commissioners that said company has completed in good and substantial manner and furnished for actual use a continuous section of eleven miles of its road, it being one entire half of its road from Hempstead to Brenham, the said continuous section of eleven miles commencing at Hempstead; and

Whereas the said board of school commissioners has appointed a competent engineer, who has examined the road of said company and made a full report upon the condition thereof under oath, and has also reported all matters pertaining to the business of said company which he deemed useful to said commissioners in ascertaining the true condition of said road and company;

And whereas the said company has produced to said commissioners certificates from the proper officers of the counties in which said road is situated, and an affidavit made by the president of said company showing that said road is not subject to any lien or incumbrance of any kind having priority over or coming in conflict with the lien or mortgage of the State;

And whereas said board of school commissioners, being fully satisfied that said continuous section of the eleven miles of said road has been constructed and completed in accordance with the provisions of the acts aforesaid, and that the said road and said section are not subject to any lien whatever in conflict with or otherwise affecting the lien or mortgage to be created by this obligation, they, the said board of school commissioners, have drawn a warrant on the
215 treasurer of said State of Texas in favor of said railroad company against the special school fund for the sum of sixty-six thousand dollars, to be paid in five per cent. bonds of the United States belonging to the said special school fund at their current value, including premium, should the same be above their par value; but if not, then at their par value:

Now, therefore, for and in consideration of the premises and of the sum of one dollar to said company paid by the said commissioners, the said company hereby acknowledges itself to be justly indebted to the State of Texas in the sum of sixty-six thousand dollars, which amount the said company promises to pay the said State, at the office of the treasurer thereof, in the city of Austin, ten years from the date hereof, with interest thereon at the rate of six per cent. per annum, to be paid at the office of the said treasurer on the first day of March in each year, for which annual payment of interest coupon bonds are hereto attached; and said company also promises to pay the said State, at the office of said treasurer, at the expiration of each year from the date of this loan, two per cent. upon said sum of sixty-six thousand dollars for the purpose of establishing a sinking fund to be applied towards the payment of said loan of sixty-six thousand dollars at its maturity, and the said company hereby assents that this bond and the coupon bonds hereto attached may and agrees that they shall constitute a lien upon the road and chartered rights of said company, including the roadbed, right of way, grading, bridges, iron rails, equipments, and

upon all the stock subscribed for in said company, all the depots, depot stations, and all the property owned by said company, as necessary for its business.

That said lien shall have priority over all other claims against said company, and that the State of Texas, upon the execution of this bond and the coupon bonds for interest hereto attached and by virtue of the same, shall be invested with said lien or mortgage for the payment of said bond and all sums thereby agreed to be
216 paid, and the interest thereon, as the same becomes due, without the necessity of any deed, special contract, or act of registration, and that the said State of Texas shall also be invested with all the other rights and privileges which are provided for in the provisions of the acts aforesaid, and the said acts are hereby referred to and made a part of this bond and the coupon interest bonds hereto attached.

In testimony whereof the said Washington County Railroad Company has caused its corporate seal to be hereto affixed and the same to be signed by its president and countersigned by its treasurer this 28th day of May, A. D. 1859.

(Signed) J. D. GIDDINGS, *Pres't.*
A. G. COMPTON, *Treas.*

Signed in the presence of—
JNO. S. YOUNG.
J. M. OWENS.

STATE OF TEXAS, }
County of Washington. }

Personally appeared before me, S. S. Hosea, clerk of the county court of said county, J. M. Owens and J. S. Young, subscribing witnesses to the foregoing bond, who, being duly sworn, saith that J. D. Giddings, president of said railroad company, and A. G. Compton, treasurer thereof, signed, sealed, and delivered the same in their presence for the purposes and considerations therein expressed, and that they signed their names as witnesses to the due execution thereof at the request of said signers.

Witness my hand and the seal of said county, at Brenham, this twenty-eighth day of May, eighteen fifty-nine.

[SEAL.] S. S. HOSEA, *C. C., W. C.,*
By G. B. HAINS, *Deputy.*

217 STATE OF TEXAS, }
County of Austin. }

Filed for record at 2 o'clock p. m. May 28th, A. D. 1859, and recorded same date at 6½ o'clock p. m., in Book H of Deeds of Austin County Records, pages 311, 312, and 313, No. 210; to certify all which I hereunto sign my name and affix the impress of the seal of the county court of said county, at office, in the town of Belleville, this the 28th day of May, A. D. 1859.

[SEAL.] GEORGE W. JOHNSON,
C. C. C., A. C.,
By Z. W. MATTHEWS, *Deputy.*

THE STATE OF TEXAS, }
Washington County. }

I, S. S. Hosea, clerk of the county court of Washington county and State of Texas, do hereby certify that the above and foregoing bond was filed for record in my office at 9 o'clock a. m. and recorded on same day at 11 o'clock a. m. in Book Q of Deeds, Mortgages, etc., of Washington County Records, pages 662 and 663, No. 604.

Attest S. S. Hosea, clerk, and the seal of the county court of Washington county and State of Texas, at office, in the town of Brenham, in said county, this the 30th day of May, A. D. 1859.

[SEAL.] S. S. HOSEA,
C. C. C., W. C.
G. W. HAINS, *Deputy.*

Endorsed (only) in the following words, to wit: Filed Feb. 10, 1896. Jas. P. Hart, clerk.

Plaintiff next introduced in evidence, over the objection of defendant, as shown by bill of exceptions # 4, the message of Gov. E. J. Davis, dated Aug. 6, 1870, to house of representatives of the twelfth legislature, vetoing the act entitled "An act for the
218 relief of the Houston & Texas Central Railway Company."

The defendant had offered a part thereof, as is shown by the portion of the house and senate journals read in evidence and above set forth.

The entire message is as follows:

Extracts from House Journal, Twelfth Legislature.

EXECUTIVE OFFICE, AUSTIN, *Aug.* 6, 1870.

Hon. Ira H. Evans, speaker of the house of representatives.

SIR: I feel it my duty to return to your house, where it originated, "An act for the relief of the Houston and Texas Central Railway Company," and ask that the same be reconsidered.

The constitution (article nine, section nine) provides that the legislature "shall, from time to time, as may be necessary, invest the principal of the school fund in the bonds of the United States Government and in no other security." The act under consideration entitled "An act for the relief of the Houston and Texas Central Railway Company" is in direct conflict with the constitutional provisions cited. It undertakes, after attempting to consolidate the Washington County Railroad Company with the Central, to make an investment of a portion of the school fund that had been loaned to the two companies named prior to the adoption of the present constitution in new bonds of the Central (which the preamble of the act says are "issued," while the body says "are issued or to be issued"), and to release $152,864.55 of the school money altogether. The whole amount that this company is indebted to the school fund (including this amount proposed to be released) was on March 1, 1870, $756,197.57.

It does not lie within the power of the legislature to invest or reinvest the school fund otherwise than as provided by the constitution. It cannot remit or grant any portion of that fund as is attempted in this act.

219 Section four of this act, under the guise of relieving from a forfeiture under an act of September 21, 1866, styled "An act granting lands to the Houston and Texas Central Railway Company," appears to be an ingenious device to evade section six of article ten of the constitution, and to continue to that company a grant of land which has been forfeited by its own failure to comply with the law, and which has been cut off by the constitution.

Section six of the act provides that "All laws or parts of laws now in force concerning this company, not in conflict with the foregoing provisions, shall not be affected by the passage of this act," a seemingly unnecessary and harmless provision, but one which must have been devised so as to declare by implication that "all laws and parts of laws in conflict with it are by it affected" or amended.

As section eighteen of article twelve of the constitution does not permit a law to be revised or amended by reference to its title, it is surely not competent for the legislature to "affect"—that is, revise or amend—laws and parts of laws by implication and without so much as making reference to their titles.

Time only remains to call your attention — two other constitutional objections to this act.

Section two of the act, by providing for the investment of the school fund in new bonds "issued or to be issued by virtue of a deed of trust executed by said company on the first day of July, A. D. 1866," makes the act a "retroactive law" and causes it to conflict with section fourteen of article one of the constitution.

This provision merits a most serious consideration not only on account of the constitutional point, but because it suggests inquiry as to the validity of a deed and bonds made (whether in behalf of one or both of the roads mentioned in the act) prior to any lawful authority on the part of either or both to make them.

Had section seventeen of article twelve of the constitution prescribed that every law enacted by the legislature "shall
220 embrace more than one object, and they shall not be expressed in the title," instead of the contrary, this act might, so far as its title is concerned, be held to have complied with its requirements; but not otherwise. If, instead of "An act for the relief of the Houston and Texas Central Railway Company," it had been styled "An act investing and donating portions of the school fund," "An act for the relief of the Washington County Railroad Company," or "An act to consolidate and confer new affirmative franchises to the railroad companies named," its title would carry a better idea of the chief of the various objects embraced in its scope, some of which (such as the right to branch) do not lie within the import of the vague word "relief." Considerations of public policy, some of which are obvious, might be urged against this act, but to present them would be superfluous.

Upon an examination of the statutes, abundant evidences will appear that perhaps no corporation chartered by this State has dealt more largely in promises and has been more slack in performance, has more frequently come forward in one mode or another for relief, and has caused greater cost, in the way of legislation for its own benefit, than the corporation that has obtained this act. The fact that such is its record should not operate in its favor, especially when it sets at naught the constitution and seeks to spoliate the school fund.

The act asserts in its preamble that the State may exchange its present lien for the seven per cent. bonds of the company "without in any manner endangering the school fund."

This statement is not the truth. The said seven per cent. bonds, the Houston & Texas Central railroad, are now worth in the money market about eighty-five to eighty-eight cents per dollar in currency. My correspondents in New York to whom I applied for information write as follows: "In looking around to find the market value today (15th July) I was offered eighty-five for $100,000;"
221 "were a large sum put on the market of these bonds under orders to sell promptly, I doubt whether they would bring even 85 flat." * * * "The agent's price for the bonds in New York is ninety and accrued interest, but I doubt very much whether any sales for money have been made for that price; at least I know that our firm have frequently bought and sold these bonds for years past, and always under the agent's price."

As the lien we now have on this railroad is worth dollar for dollar in gold and the amount can be realized at once, and as gold is now selling at upwards of 120 per cent. in currency, and as we can take this currency and buy these very bonds at eighty-five cents on the dollar, it can very easily be seen that the school fund is endangered to the amount of more than $250,000 currency by this exchange.

But, in addition, the act, as before stated, proposes to release $152,864.55. The company claims this under pretense that it was paid during the rebellion in conformity with laws then controlling. The fact is that all railroad companies indebted to the school fund were by an act passed January 11, 1862, relieved from the necessity of any payment of either interest or principal of the school fund till "six months after the termination" of the war. Acts were subsequently passed (December 16, 1863, and November 15, 1864) allowing the companies to pay interest and principal in Texas treasury warrants and bonds and coupons.

These acts were passed avowedly for the purpose of keeping up the credit of that sort of money and security issued by a government in hostility to the United States, and the recognition of payments made thereunder violates the spirit (if not the letter) both of the fourteenth amendment to the Constitution of the United States and section thirty-four, article twelve, of our own constitution. Further, the payments made by these companies were delayed till the class of currency paid in was scarcely worth as much as
222 waste paper. The only payments made by the Houston & Texas Central railroad were from January to August, 1864,

when this paper might possibly have averaged twenty-five or thirty for one dollar of gold, but no more, while the only payment made by the Washington County railroad was made in May, 1865 ($31,543.80), more than one month after the surrender of General Lee. These are the sort of payments which the act proposes to accept as equivalent to gold.

These two roads have since 1867 ceased altogether to make payments of either principal or interest due the school fund, not, however, from inability to pay, as the receipts of the Houston & Texas Central railroad alone since that year, beyond all current expenses, have been largely more than sufficient to pay off all the indebtedness of both roads.

While we are debating the propriety of a system of internal improvements to be aided by the State, the management of this Houston & Texas Central railroad in its relation to the State and its influence on legislation may well cause us to hesitate.

At every session of the legislature and conventions of the people for years past, this road has managed to procure some legislation to "relieve" it from the consequences of its own want of compliance with its promises entered into under previous acts of relief. The present act is a sweeping instance of the sort. Overflowing with wealth wrung by exorbitant charges from the people, forgetting the princely donation it has already received in lands, and emboldened by previous success, its managers now throw off the last scruples and seek to evade their solemn obligations in every respect, even grasping at the fund sacredly hoarded for the education of the children of the State.

So far this corporation has been successful in enforcing its demands, and it remains to be seen whether any limit can be placed thereon. If this comparatively weak corporation can thus control legislation and defy law, justice, and its own obligation, what may we expect from the great monopolies we are anxious to build up.

223 An exhibition of patriotic firmness on the part of the legislature, in resisting the project, will save the State from many ills.

Respectfully,

(Signed) EDMUND J. DAVIS, *Governor.*

THE STATE OF TEXAS, }
Department of State. }

I, Allison Mayfield, secretary of state of the State of Texas, do hereby certify that the within and foregoing is a true copy of the message of Edmund J. Davis, governor of Texas, to the legislature of Texas in relation to "An act for the relief of the Houston & Texas Central Railway Company," as contained in the House journal of the twelfth legislature, which convened in the city of Austin, April 26th, 1870, and adjourned August 15, 1870.

Witness my official signature and seal of State, affixed at the city of Austin, this the 22nd day of January, A. D. 1896.

(Signed) ALLISON MAYFIELD,
Secretary of State.

Copy.

Plaintiff next introduced, over the objection of defendant, as shown by bill of exception No. 11, a certificate of R. W. Finley, comptroller of public accounts of the State of Texas, dated the 27th day of January, 1896, under his seal of office, setting forth copies of certain entries therein specified as contained in the books of his department, showing charge of certain 8 % State bonds to the military board during the years 1862, 1863, and 1865, and other entries in reference to such bonds during said years, as follows, to wit:

224 COMPTROLLER'S OFFICE, AUSTIN, TEXAS.

I, R. W. Finley, comptroller of public accounts of the State of Texas, do hereby certify that the following is a true and correct copy of the entries therein named as they appear on the books of this department:

Journal "A," page 583, May —, 1862.

"Military boards to 8% State bonds."

"Bonds No. 3	1,000.00
"Bond No. 5 to No. 250, inclusive, 246, at $1,000 ea.	246,000.00
	247,000.00

"With interest coupons from Jan. 1, 1862, to be accounted for by military board."

Journal "B," page 62, June —, 1863.

"Military board, 50 8% State bonds."

"For amount delivered to military board (301) to June 30, '63	301,000.00 "

Journal "B," page 76, August —, 1863.

"Cancelled treasury warrants to 8% State bonds."

"For this amount cancelled and funded in 294 bonds."	294,291.53 "

Journal "B," page 184, May 31, 1865.

"Military board Dr. to 8% State bonds."

"For 30 8% State bonds, Nos. 871 to 900, inclusive, delivered to C. H. Randolph, as per receipt on register of bonds	30,000.00
"For 2 8% State bonds, Nos. 901 and 902, delivered to C. H. Randolph, per statement of W. S. Hotchkiss, accountant, but not receipted for on his register of bonds	2,000.00

225

"For 15 8% State bonds, Nos. 903 to 917, inclusive, delivered to N. B. Pierce and J. S. Holman, as per register of bonds..... .... 15,000.00

$47,000.00"

In witness whereof I hereunto set my hand and official seal this the 27th day of January, A. D. 1896.

(Signed) R. W. FINLEY,
[SEAL.] *Comptroller of Public Acc'ts.*

For the purpose of showing the amount of State warrants on hand belonging to the permanent school fund fundable in six per cent. and 8% bonds respectively, as well as the general condition of the school fund, plaintiff next introduced in evidence, over the objections of defendant, as shown by bill of exceptions No. 12, a statement or account headed "State of Texas school fund in account with C. H. Randolph, treasurer, for two months, ending on the 31st of December, 1864," certified to by R. W. Finley, comptroller of public accounts, under his seal of office, on the 18th day of January, 1896, and by W. B. Wortham, treasurer, under his seal of office, on the 7th day of February, 1896, as follows, to wit:

226 The State of Texas school fund in account with C. H. Randolph, treasurer, for two months, ending on the 31st December, 1864. 227

Dr.

To amount of cash disbursed upon special treasury warrants drawn upon county orders for school fund due counties, viz:			
In Confederate notes, new issue.....		1,150.78	
" " " old issue.....		1,798.94	
		2,949.72	2,949.72
To balance cash on hand Dec. 31st, 1864:			
In bonds of railroad companies.	1,780,980.00		
In 10% interest warrants....	11,239.71		
In specie for investment....	4,148.88		
		1,796,368.59	
In specie for distribution..	1,124.20		
In specie due upon " ..	677.80		
In specie, contingent fund....	977.00		
		2,779.00	
In treasury warrants, fundable in 8% bonds.....	281,567.33		
In treasury warrants, fundable in 6% bonds.....	7,256.00		
		288,823.33	
In Confederate notes, old issue, due upon distribution....	196,024.25		
In Confederate notes, old issue, for distribution.....	35,626.74		
		231,650.99	
			2,319,621.91

Cr.

By balance on hand, cash, Oct. 31st, 1864, viz:			
In bonds of railroad company	1,780,980.00		
10% interest warrants.....	11,239.71		
In specie, for investment.....	4,148.88		
		1,796,368.59	
In specie, for distribution....	1,124.20		
" due upon distribution.....	677.80		
" contingent fund....	977.00		
		2,779.00	
In treasury warrants, fundable 8% bonds.....	281,567.33		
In treasury warrants, fundable 6% bonds.....	7,256.00		
		288,823.33	
In Confed. notes, old issue, due on distribution.....	197,823.19		
In Confed. notes, old issue, for distribution	23,785.01		
		221,608.20	
			2,309,579.12
Received by transfer *by* in old issue Confed. notes:			
Amount transferred from revenue of State account, being a portion of one-tenth of the revenue received.....	8,630.46		
By amount transferred from State-revenue account by order of the comptroller....	2,311.27		
		11,841.73	

	In new issue Confederate notes:		
	By amount transferred from State-revenue balance of one-tenth of State revenue received	420.10	
	By amount transferred from State-revenue account by order of comptroller	730.68	
		1,150.78	
			12,992.51
2,322,571.63			2,322,571.63

228 TREASURER'S OFFICE,
AUSTIN, *Dec.* 31*st*, 1864.

C. H. Randolph, treasurer.

THE STATE OF TEXAS, }
County of Travis. }

I, R. W. Finley, comptroller of public accounts of the State of Texas, do hereby certify that the above and foregoing is a true and correct copy of the original instrument now on file in this department.

In witness whereof I hereunto set my hand and official seal this the 18th day of January, A. D. 1896.

[SEAL.] R. W. FINLEY,
Comptroller of Public Accounts.

TREASURY DEPARTMENT,
AUSTIN, TEXAS, *Feb'y 7th*, 1896.

I, W. B. Wortham, treasurer of the State of Texas, do hereby certify that the items set forth in the within statement are true and correct, as shown by the books of this office.

In witness whereof I hereunto set my hand and official seal the date above written.

[SEAL.] W. B. WORTHAM, *Treasurer.*

For same purpose plaintiff next introduced in evidence, over the objections of defendant, as shown by bill of exception # 13, a statement or account headed "The State of Texas school fund in account with C. H. Randolph, treasurer, for two months ending the 28th day of February, 1865," certified to by R. W. Finley, comptroller of public accounts, under his seal of office, on the 18th day of January, 1896, and by W. B. Wortham, treasurer, under
229 his seal of office, on the 7th day of Feb., 1896, as follows, to wit:

The State of Texas school fund in account with C. H. Randolph for two months ending on the 28th day of February, 1865.

DR.

To amount disbursed in payment of special treasury warrants drawn for school funds due counties upon 6,663.54, orders of county courts, new issue Confederate notes		6,663.54	
Exchange.			
To amount of Confederate notes, old issue, on hand in this fund on Dec. 31, 1864, delivered to P. Priestly, C. S. depository at Austin, by order of the comptroller; to be exchanged for notes of the new issue under the acts of the C. S. congress and of the State legislature relating thereto, viz., am't due counties upon distribution	196,024.25		
Am't for distribution to counties	35,626.74		
		231,650.99	
			238,314.53

To bal. due cash on hand Feb. 28, '65, viz:			
In bonds of railroad companies	1,780,980.00		
" 10 % interest warrants	11,239.71		
" specie for investment	4,148.88		
		1,796,368.59	
" " " distribution	1,124.20		
" " due for distribution	677.80		
" " contingent fund	977.00		
		2,779.00	
" treasury warrants, funl. in 8 % bonds.	281,567.33		
" " " " 6 % " .	7,256.00		
		288,823.33	
" Confederate notes, new issue, for distribution in 1865	4,509.04	4,509.04	
			2,092,479.96
			2,330,794.49
230	Cr.		
By balance on hand Dec. 31, '64, viz:			
In railroad bonds	1,780,980.00		
" 10 % warrants	11,239.71		
" specie for investment	4,148.88		
		1,796,368.59	
" " " distribution	1,124.20		
" " due on "	677.80		
" " specie contingent fund	977.00		
" Confederate notes due on distributions made	196,024.25		
" Confederate notes for distribution in 1865	35,626.74		
		231,650.99	
" treasury warrants fundable in 8 % bonds	281,567.33		
" treasury warrants fundable in 6 % bonds	7,256.00		
		288,823.33	
			2,319,621.91
Receipts Transfer.			
In Confederate notes, new issie, by am't one-tenth of the State taxes rec'd during two months, transferred from the State revenue account	3,358.26		
Loan:			
Confederate notes, new issue, by am't transferred from State revenue ac. until new issue is rec'd from the C. S. government in exchange for the old, this am't having been paid to counties on account of school fund due them. There was no new issue on hand in the school fund	7,814.32	11,172.58	11,172.58
			2,330,794.49

231 TREASURER'S OFFICE,
AUSTIN, *February 28th*, 1865.

C. H. Randolph, treasurer.

THE STATE OF TEXAS, }
County of Travis. }

I, R. W. Finley, comptroller of public accounts of the State of Texas, do hereby certify that the above and foregoing is a true and correct copy of the original of said instrument now on file in this department.

In witness whereof I hereunto set my hand and official seal this the 18th day of Jan'y, A. D. 1896.

(Signed) R. W. FINLEY,
[SEAL.] *Comptroller of Public Accounts.*

TREASURY DEPARTMENT,
AUSTIN, TEXAS, *Feb'ry 7th*, 1896.

I, W. B. Wortham, treasurer of the State of Texas, do hereby certify that the items set forth in the within statement are true and correct, as shown by the books of this office.

In witness whereof I hereunto set my hand and official seal the date above written.

(Signed) W. B. WORTHAM,
[SEAL.] *Treasurer.*

Plaintiff next introduced in evidence, over the objection of defendant, as shown by bill of exceptions No. 14, a statement or account headed "State of Texas school fund in account with C. H. Randolph, treasurer, for quarter ending on the 31st day of May, 1865," certified to by R. W. Finley, comptroller of public accounts, under his seal of office, on the 18th day of January, 1896, and also certified to by W. B. Wortham, treasurer, under his seal of office, on the 7th day of Februaiy, 1896, as follows, to wit:

232 The State of Texas school fund in account with C. H. Randolph, treasurer, for the quarter ending on the 31st day of May, 1865.

DR.

To disbursements as follows:

Transfers.

To amount of treasury warrants derived from principal and interest on railroad bonds for cancellation and substituted in this fund by 6 % State bonds, as *per contra.*

Treasury warrants fundable in 6 % bonds.	287,812.93		
Treasury warrants fundable in 6 % bonds.	32,554.20		
		.....	320,367.13
To balance cash on hand May 31st, 1865:			
Balance due on bonds of R. R. companies	1,753,317.00	1,753,317.00	
6 % State on account principal of do. paid in	27,663.00	27,663.00	
6 % State on account interest on do. paid in	292,704.13	292,704.13	
10 % interest warrants, including int. paid on same	11,239.71	11,239.71	
Specie for investment	4,148.88	4,148.88	
			2,089,072.72

Specie for distribution for schools	1,124.20		
Specie due upon distributions made.....	677.80		
" contingent school fund.....	977.00		
		2,779.00	
" Confed. notes, n. i., for dis'n.....	20,309.72	20,309.72	
			23,088.72
Disbursement by substitution for amount of bonds of railroad Co's (Washington Co.), reduced by payment on account of principal, and substituted by 6 % State bond-, *per contra*.....	27,663.00	.....	27,663.00
			$2,460,191.57

233 CR.

By balance cash on hand Feb'y 28, 1865:			
In balance due upon bonds of R. R. Co's.	1,780,980.00		
In 10 % interest warrants	11,239.71		
In specie for investment.....	4,148.88		
		1,796,368.59	
In specie for distribution to schools	1,124.20		
In specie due on distributions made... .	677.80		
In specie, contingent fund	977.00		
		2,779.00	
In treasury warrants fundable in 8 % bonds	281,567.33		
In treasury warrants fundable in 6 % bonds	7,256.00		
		288,823.33	
In Confederate notes, n. i., for dist'b'n..	4,509.04	4,509.04	
			2,092,479.96
Transfer-.			
In Confederate notes, new issue, amount transferred from revenue of State account, being one-tenth of the State taxes.....	15,800.68	.....	15,800.68
Received in 6 % State bonds:			
By account of 6 % State bonds, substituted in lieu of an equal amount of treasury warrants on hand on 13th May, 1865, on account of principal & interest on railroad bonds, under an act of the leg. app'd November 14, 1864, which warrants were transferred to State revenue, and cancelled bond No. 1 May 13, 1865, substituted for warrants on int. acc.	292,704.13		
Bond No. 2, May 13, 1865, substituted for warrants on acc. principal....	27,663.00		
		.....	320,367.13
			$2,460,191.57

TREASURER'S OFFICE,
AUSTIN, *May* 31, 1865.

C. H. Randolph, treasurer.

THE STATE OF TEXAS, }
County of Travis. }

234 I, R. W. Finley, comptroller of public accounts of the State of Texas, do hereby certify that the above and foregoing is a true and correct copy of the original now on file in this department.

In witness whereof I hereunto set my hand and official seal this the 18th day of January, A. D. 1896.

R. W. FINLEY,
[SEAL.] *Comptroller of Public Accounts.*

TREASURY DEPARTMENT,
AUSTIN, TEXAS, *Feb'ry 7th*, 1896.

I, W. B. Wortham, treasurer of the State of Texas, do hereby certify that the items set forth in the within statement are true and correct, as shown by the books of this office.

In witness whereof I hereunto set my hand and official seal the date above written.

[SEAL.] W. B. WORTHAM, *Treasurer.*

Plaintiff next introduced in evidence, over the objections of the defendant, as shown by bill of exception # 15, a statement headed "Statement of treasurer's receipts from revenue and other sources during the months of January and February, 1865," certified to by R. W. Finley, comptroller of public accounts, under his official seal, on the 18th day of Jan'y, 1896, as a true and correct copy of the original of said instrument then on file in his department, and also certified to by W. B. Wortham, treasurer, under his official seal, on the 7th day of February, 1896, as a true and correct statement, as shown by the books of his office, which statement shows treasurer's receipts from revenue and other sources during the two months stated to be as follows:

In new issue Confederate notes	$10,292.08
" specie	8,794.50
" treasury warrants fundable in 8 % bonds.....	9,820.91
" " " " " 6 % "	14,892.34
Total	$43,889.83

Plaintiff next introduced in evidence, over the objections of the defendant, as shown by bill of exception # 16, a statement
235 headed "Statement of treasurer's receipts from revenue and from other sources during the month of April, 1865," certified to by R. W. Finley, comptroller of public accounts, under his official seal, on the 18th day of January, 1896, as a true and correct copy of the original of said instrument then on file in his department, and

also certified to by W. B. Wortham, treasurer, under his official seal, on the 7th day of February, 1896, as a true and correct statement as shown by the books of his office, which statement showed treasurer's receipts from revenue and other sources during the month of April, 1865, to be as follows:

In specie.....	43.
" Confederate notes.....	172,231.22
" treasury warrants fundable in 8 % bonds..... ..	5,607.34
" treasury warrants fundable in 6 % bonds.....	5,074.00
Total.....	$182,955.56
From special loan tax (in Confed. notes)...	1,000.00
	1,500.00 in specie (cotton sales).

Plaintiff next read in evidence, over the objections of the defendant, as shown by bill of exception # 17, an extract from the recommendations of C. R. Johns, former comptroller, made in his annual report to the governor, as comptroller of public accounts, on the — day of November, 1861, in reference to issuing treasury warrants:

"There being no prospect of replenishing the treasury by a sale of State bonds, and as the tax of the present year will not be available before the middle of next summer, it becomes highly necessary to provide means for the support of the government until that time.

236 To thus provide and establish the par value of treasury warrants are objects worthy of the first and highest consideration.

The entire accomplishment of these important objects would certainly result from the plan already proposed, provided only that treasury warrants be made receivable for taxes and all public dues.

The fact that the proposed revenue will far exceed the amount of warrants to be issued will make the demand for warrants greater than the supply and render them equivalent to specie, thereby affording to the government ample means for present support and to the people great facilities for the payment of tax during the war, and the consequent scarcity of specie.

No embarrassment or inconvenience can possibly result from the policy of making treasury warrants receivable for public dues, provided only that the issue of warrants is limited to the amount of revenue required, which may be controlled by the legislature in making appropriations for that purpose.

A treasury warrant is simply an order on the State treasurer to pay to the order of the party a certain amount audited in his favor.

Should the State treasurer have no funds for the payment of warrants, an act of the legislature making them receivable for

public dues is in effect only to authorize such other financial agent of the State as may have means to redeem the same.

The issue of warrants or audited scrip may at times become necessary to meet extraordinary emergencies, or to avoid this necessity a safety fund should be provided and retained in the treasury sufficient to meet such demands, which, indeed, would be less objectionable than to resort either to the uncertain means of borrowing money or to the issue of warrants or scrip of any kind, yet it cannot be denied that the commercial habits and necessities of the country and the progressive and enterprising disposition of the government and people sometimes demand the use of credit
237 in place of coin as an irresistible public necessity. Under no circumstances should anything but specie or audited drafts on the State treasurer be made receivable for public dues. To make any other description of paper receivable for State dues to be again issued would not only be obnoxious to law, but highly detrimental to the credit of the State.

The State being in debt, her own liabilities should be preferred to all others, and after the State debt had been paid by the issue and redemption of warrants, as proposed, the revenue for the ordinary support of the government should forever be collected in specie. Should it be found necessary to continue the issue of treasury warrants, and should such measures be adopted as will preserve the par value of same, it will be quite unnecessary to continue the issue of interest warrants, since it is manifested that the interest adds but little to the value of such issues.

This is the only practicable method known to this office under existing circumstances by which the good faith and credit of the State may be preserved, the public debt promptly paid, and available means furnished to meet the present necessities of the government."

(Report of C. R. Johns, comptroller, page 108.)

"No action has yet been taken under the law authorizing the funding of the military debt, though it is probable that a small amount may be funded prior to the meeting of the legislature.

This law, though beneficial to capitalists, will never affect the desired object of rendering treasury warrants available at par to first holders" (same, page 115).

Plaintiff next read in evidence, over the objections of defendant, as shown by bill of exceptions No. 5, a part of the message of Governor Lubbock, dated November 15th, 1861, to the regular session of the ninth legislature of the State of Texas, as follows:

238 The finances of the State is at all times a most important question, and becomes more than ordinarily so in the present crisis. In the condition of the country at this time, and the consequent derangement of all monetary matters, it would be impossible, even were it good policy, for the State to negotiate a loan. Our people well understand this, and are prepared to meet any reasonable demand made upon them by way of taxation.

The very able report of the comptroller demands at your hands the most careful consideration. By it you will see that the probable receipts for the two fiscal years ending 31st day of August, 1863, exclusive of the ten per cent. due to the school fund, amount to $976,651.24. The expenditures for the same period of time to support the civil government amount to $608,810. In addition to this necessary expenditure, he reports that there will be required to liquidate the estimated indebtedness of the State, 1st, for outstanding ten per cent. treasury warrants issued up to 1st September, 1861, $290,903.63; 2nd, unaudited claims:

Am't due	Col.	Ford's command, on the Rio Grande.....		$130,000
"	"	" H. E. McCulloch's, on the N. W. frontier..		20,000
"	"	" Ford's regiment, raised by the convention while in State service		30,000
"	"	" Dalrymple's command, on N. W. frontier..		17,000
"	"	minute companies for 1860 and 1861.....		40,000
"	"	for other services.....		37,000
"	"	for obtaining and turning over property captured from the United States		100,000
"	"	for purchase of Colt's pistols.....		25,000
"	"	" Gregg's, Parson's, Lock's, and Sim's regiment.....		250,000

The audited and unaudited debt aggregating the sum of $939,903.63, which added to the sum necessary to the support of the civil government makes the sum of $1,548,713.63, which amount is required for the support of the civil government up to the end of the fiscal year ending 31st August, 1863, and to liquidate the
239 audited and unaudited debt of the State as estimated up to the 1st September, 1861.

It will thus be seen that the sums required for the support of the civil government for the two fiscal years ending 31st August, 1863, and for the payment of the present outstanding debt of the State amounts to $572,062.39 over and above the estimated receipts for the same period of time.

These are demands and expenditures that we know must be provided for, leaving out of view any additional amounts that Texas may be called on to raise to aid and assist the Confederate government in prosecuting the war and which she may find necessary to expend in the protection of her own soil.

In order to meet the deficit manifested in the report of the comptroller, he advises an increase of taxation to 25 cents on the $100 worth of taxable property in the State and a reduction in the price of the public lands to fifty cents per acre. I here call your special attention to this portion of the report, and urge upon you to give it mature and deliberate consideration, believing as I do that the sales of public lands, even at the reduced price proposed, will fall far short of the amount estimated by the comptroller, and that we must rely almost entirely on taxation.

No one regrets more than I do the necessity of increased taxation at this time of peculiar hardships upon the people, particularly

when I am so well aware that for the past eight months our citizens, with rare exceptions, have responded so liberally and generously to the support and comfort of those gallant spirits in the field, but we must bear in mind that we are engaged in a contest for liberty, equality, and right of self-government. To secure these our home and general government must be sustained at a sacrifice.

Under these circumstances I deem it imperatively necessary that at least the rate of taxation proposed by the comptroller should be levied for the relief of the treasury during the next two years.

240 The present tax for county purposes is deemed sufficient, inasmuch as they are now generally supplied with their public buildings and the contingent expenses of the courts being greatly reduced by their partial suspension. Should, however, any of the counties, from their spirit of liberality in making advances toward the equipment of troops and otherwise aiding in the struggle, find it necessary to ask permission to levy a further tax than that allowed by law, I would advise a generous consideration of such application.

The treasury at this time having no gold or silver in its vaults, it becomes necessary for you, by legislation, to provide means for carrying on the civil government until such time as the treasury shall be in receipt of its usual revenues for this purpose. From the limited information now in my possession, I can point you to no better mode than the issue of treasury warrants, payable at the treasurer's office out of any moneys not otherwise appropriated. I would suggest, however, that hereafter the warrants should be so issued as to bear no interest.

The treasury warrants now outstanding and bearing ten per cent. interest are selling at a most ruinous discount, and I can safely say that the civil government cannot be supported by the issuance of treasury warrants unless you, by some legislation, shall cause them to appreciate to at least near their face value. To accomplish so desirable — result I would suggest to you to take into the consideration the propriety of making all the warrants heretofore issued, as well as those which may be hereafter issued, receivable in payment of taxes and for all other public dues of whatever nature or kind.

Esteeming it as I do the duty of our State, as well as the duty of every citizen, to sustain by every means in their power the credit of the Confederate States, I cannot but recommend that the treasury notes issued by that government be, by an act of the legis-

241 lature, placed on the same footing as the warrants issued by our State treasury, and that they also be made receivable in payment of all public dues.

Plaintiff next read in evidence, over the objections of defendant, as shown by bill of exceptions No. 6, a part of the message of Governor Lubbock, dated February 5th, 1863, to the extra session of the ninth legislature, as follows, to wit:

State Finances.

There was received into the treasury on account of State revenue from the 1st day of July, 1862, to Dec. 31st, 1862:

To amount on hand January 1st, 1862	$13,366.67
From $\frac{9}{10}$ State taxes, licenses	346,305.39
" sale of land scrip	28,138.29
" sale of State bonds	183,995.07
From financial agent of penitentiary	148,278.88
" other sources	28,495.78
	749,080.08
Amount disbursed during same time	746,597.80
Leaving balance on hand Jan. 1, 1863	2,482.28

The military board have sold 460 State bonds of $1,000 each, from which they realized $476,420.60, 100 of which amount, as above stated, they paid to account of State revenue, $183,995.07, leaving them properly chargeable with $292,427.53.

Under the law to regulate and authorize funding in State bonds, approved 13th Jan., 1862, amount funded $196,000, making in all of loan bonds disposed of 656; 210 bonds remain to the credit of the military board to meet contracts made and future liabilities growing out of contracts.

There has been disbursed from the treasury in payment of liabilities on military account incurred prior to January 1st, 1862, $837,452.52; upon liabilities since 1st Jan., 1862, to Dec. 31st, 1862, $509,535.46.

There has been expended on civil account during the same
242 period, including $55,026.84 on account of the ninth legislature, $267,911.25.

The outstanding liabilities of the State 1st Jan., 1863, are in 8 per cent. bonds	656,000.00
In 10 per cent. int. warrants	135,000.00
In treasury warrants, without interest	888,875.72
	$1,679,875.92
Estimated amount of unaudited claims for military services prior to Jan. 1st, 1862	150,000.00
For frontier regiment	350,000.00
	$2,179,875.72

Of this amount about $1,000,000 is in payment of debts and military services incurred prior to 1st Jan., 1862.

It will also be borne in mind that the claims of the State against the Confederate government will not vary far from the entire indebtedness of the State.

From the increased demands likely to be made upon the treasury, the facility with which our citizens can procure the means to pay their taxes, and the importance of reducing State liabilities as rapidly as possible, thereby appreciating the balance, I feel no hesitation in recommending an immediate increase of the tax to one-half of one per cent., exclusive of the loan tax.

The receipts likely to come into the treasury during the year, arising from the present rate of taxation and other ordinary sources, will amount to about $500,000, $300,000 of which will be required for the support of the civil government, leaving only $200,000 for the redemption of unpaid treasury warrants, the protection of the frontier, and the general defense of the State. A tax of one-half of one per cent. would yield $1,000,000 revenue, which would soon relieve the State from financial embarrassment.

The amount of the special specie tax assessed for 1861 amounted to $112,302.30, of which sum there has been paid into the treasury $90,491.65, being almost as large a percentage as the amount collected in currency.

243 The fact of the State having pledged her faith to pay the interest on her loan bonds semi-annually in specie has caused these bonds to be much sought after, and the board appointed for that purpose could long since have disposed of the entire amount authorized by law. The board have, however, preferred to use them only as the necessities of the treasury required it, thus saving a large amount of interest to the State. I trust the legislature will not disturb the position which this loan occupies to our people, as our citizens readily responded to our wants and invested their means, when solicited, in these bonds, relying upon the punctual payment of the interest in specie.

There is now in the treasury a sufficient sum to meet the interest on the entire million of bonds for one year, and I believe there will be a sufficient amount collected to meet the interest as it becomes due; but, to guard against any contingency, I trust the legislature will empower the comptroller and treasurer to make such arrangements as will secure a sufficient amount of specie to place it beyond doubt. It can be done very easily, and our faith kept and our credit sustained.

We know not what a few months may bring forth. The necessities of our country may require us to raise large sums to defend the State. Let us, then, do nothing likely to impair our credit; and, when called upon, rest assured our citizens will respond with their last dollar.

I most respectfully suggest that the law authorizing the funding of State warrants in the present loan bonds be immediately repealed. The amount of warrants presented for funding is increasing daily, and the fact of our State bonds bearing specie interest causes them to be in greater demand for funding than the bonds of the Confederacy. In the present condition of the country and of the currency, I think 8 per cent. interest on the State debt too high, and, should you deem it best to continue the funding of State liabil-

ities, I would recommend that bonds be issued expressly for
244 that purpose, and that they bear 6 per cent. interest.

By an act passed at the last regular session of your honorable body, Confederate treasury notes received into the treasury can only be paid out for military purposes. I presume the object of the law was to secure the most available means for military objects. The facts now show that the State warrants are more appreciated than the Confederate notes; hence I would respectfully suggest that the law be repealed and that Confederate notes be paid out as other funds for all purposes, because the revenue is principally collected in those notes, and there may be times when they are not required for military purposes and would save the drawing of large amounts of warrants, thereby lessening the amount of State liabilities. There can certainly result no injury to the State from this source.

I believe that by pursuing the course indicated there will be no necessity to put in the market before the regular session of the legislature an additional number of bonds over the amount now authorized to be sold.

At the last session of your honorable body the 16th section of the tax law was amended so as to postpone the forced collection of taxes until the 1st day of August succeeding the return of assessment-rolls, etc. At that time there was a great scarcity of money in the country and it was done to give time to put money in circulation. This delay postpones all settlement with the assessors and collectors until after the fiscal year, which ends in August, and causes much confusion in closing accounts in the comptroller's office. As there is no longer any necessity for such postponements, I respectfully suggest the repeal of the amendment.

The plaintiff next read in evidence, over the objection of defendant, as shown by bill of exception No. 7, from the message of Governor Lubbock, dated November 5th, 1863, to the regular session of the tenth legislature, as follows, to wit:

245 *State Finances.*

I beg leave most respectfully to call your attention to the very able biennial report of the comptroller ending August 31st, 1863, and to solicit at your hands a careful consideration of the many valuable suggestions made therein.

The report shows that there was a balance on hand August 31st, 1861, to credit of State revenue	$36,866.34
Receipts from nine-tenths of Texas	652,433.32
Do. sale of land scrip.....	129,097.00
Do. refunding to appropriations.....	124,792.81
Do. sale of public property, office fees, &c..	75,791.02
Do. sale of State bonds.....	212,015.70
Do. penitentiary....	500,000.00
Received by transfer from school fund.....	703,843.88
Do. transfers from university fund.....	41,521.40
	$2,468,361.47

Disbursements for the Two Years Ending August 31st, 1863.

For civil service	89,165.24
For military service	2,031,612.54
By cancellation of treasury warrants	331,763.96
Balance on hand	15,819.73
	$2,468,361.47

State Debt.

Treasury warrants drawn during the two years and yet outstanding against the treasury	$1,343,922.31
10 per cent. warrants outstanding	181,565.41
Interest on the above (estimated)	40,000.00
8 per cent. State bonds issued	891,000.00
Amount borrowed from school fund	680,325.00
Do. university fund	187,403.73
Do. settlement of estates	16,403.35
	$3,340,619.80

246 *Estimated Receipts for the Two Years Ending August 31, 1865.*

Balance on hand Aug. 31, 1863	15,819.73
Amount due on taxes of 1862	220,000.00
Do. of taxes to be collected for 1864 and 1865	3,141,200.00
Do. from penitentiary	1,000,000.00
Do. from Confederate States	1,950,000.00
Do. from military board, return of U. S. bonds	584,000.00
	$6,911,019.73

Estimated Disbursements for the Two Years Ending August 31, 1865.

For civil service	707,177.43
" frontier defense	2,000,000.00
" payment of audited debt	3,340,619.80
" payment of unaudited debt	200,000.00
	$6,247,797.23
Deducting this from receipts for same period	6,910,019.73
Shows an excess of	$663,122.50

in the revenue over all demands upon the treasury.

The comptroller in his report remarks: "Should the expense of frontier protection be transferred to the Confederate States, there will be at the end of the next two years an excess of $2,663,122.50 of revenue over all liabilities at that time, in which event, should the claims against the Confederate States remain uncollected, there would still be an excess of $713,122.50. To meet extraordinary demands not estimated for, and as a means of sustaining credit in the meantime, it is recommended that the price of land scrip be reduced to

50 cents per acre in State liabilities; that money and credit be subjected to tax, and that the tax laws be so amended as to cause a more thorough and prompt assessment and collection of taxes. With such amendments the revenue of the next two years, if collected in available means, will be sufficient to absorb the floating debt and furnish
247 the basis of a sound credit sufficient to meet all probable demands. The present rate of tax is therefore considered high enough for all State purposes."

I cannot but admit that our currency is at present in a very depreciated condition. Many causes are assigned to account for this condition of things. I presume it is attributable mainly to the large issues of the Confederate government in treasury notes. Another prominent cause is the trade carried on by our people with Mexico, where paper representing money is not current. To carry on that trade, so valuable has specie become that the great demand for it has caused little or no value to be placed on the articles that will not command specie; hence one great cause of the low price of Confederate money. I believe the taxes now in process of collection and the gathering of tax in kind (rendering unnecessary thereby so great an issue by the Confederate government), together with the aid of the impressment law, fixing the maximum prices upon articles required by it, will have the immediate effect of appreciating the currency. I feel the assurance that in this section of the Trans-Mississippi department the currency will be greatly appreciated in a very short time.

Plaintiff next read in evidence, over the objection of defendant, as shown by bill of exceptions No. 9, from the message of Governor P. Murrah, dated May 11th, 1864, to the called session of the 10th legislature, as follows:

The Currency.

Congress owned the fact that the Confederate currency was almost worthless, and provided for its withdrawal from circulation. The act was bold, if not approved by wisdom and good faith. It was an act of financial destruction if not of financial skill. They created—they destroyed. I have no comments to make. I shall deal with the legislation of Congress as it affects the finances of the State.

248 In regular session last winter, in a spirit of patriotism and for the purpose of sustaining the Confederate currency, you made all the appropriations in it. You authorized the taxes to be collected in it, and the obligations of the State to be paid from it. You believed that Congress would provide in some way to sustain the currency. After the first of July, if the currency is paid out at all from the treasury, it must be at a discount of 33⅓ per cent. of the dollar, and on the one-hundred-dollar notes at a still greater sacrifice. One-tenth of the annual taxes making the common school fund shares the same destiny. This heavy discount is upon a currency rating from twenty to thirty to one in value in comparison with specie. What proportion of the taxes has already been

collected and what proportion is yet to be collected I am not informed; but it is beyond controversy that this accumulation in the treasury is almost worthless, and that measures must be speedily adopted to relieve the State from this embarrassing position. Whether the collection of taxes in the present currency should not be at once arrested and the disposition of what is already collected and what may yet be collected is for your consideration. I believe that it should be exchanged for the new issue. The State cannot afford to hold it and fund in bonds. This would at once deprive her of the means provided by law to meet her pecuniary obligations. When this exchange can be effected I am not informed, but that it should be speedily done is evident. The State, so soon as the necessary measures can be put in operation, should cease to pay out this currency. After the first of July, if it can be avoided, no payments should be made with it. Whether the old can be exchanged for the new issue and taxes gathered in the new with sufficient expedition to meet the wants of the government is a matter for your immediate inquiry.

It is necessary to look beyond a few months or mere temporary arrangements in reference to the financial policy of the State.

249 The new issue of treasury warr-nts was very properly arrested to prevent them from being paid out in connection with Confederate notes and at the same depreciated rates.

The question is now distinctly propounded to you and must be answered by your legislation whether you will continue the same system, depend entirely upon Confederate notes in all their fluctuations and rapid changes as to value and form, or adopt a different system. The system has been fully tried, and the results to the State are fully before you. The new currency will doubtless be better than the present, and may continue so for some time, but how long none can tell. What value will be placed upon the new issue is for the future to determine; but the habit is established by the people in the use of Confederate money or receiving and paying it out at its market value. The Confederate government has not only proclaimed the present currency depreciated, but it long since taxed gold in proportion to its superior value over Confederate notes.

It is certain that a revolution has taken place in the minds of the people and the general government on the subject of currency. A more firm basis is being looked for, and specie is being recognized as the standard by which to determine the value of the paper currency. It is useless to deny the fact or attempt to conceal it. Every day transactions from Richmond to San Antonio prove it. The currency is treated as depreciated, and is so estimated in buying and selling, and the habit being so generally established will certainly continue until the currency ceases to be depreciated and is regarded as sound. I do not believe, however, that the State and the people should forget the obligation to sustain it as far as possible by making all the sacrifices that can be expected. The question, however, is presented whether or not the State alone shall continue to receive this currency at par, and, if so, whether she can

continue to conduct her operations and discharge her pecuniary obligations.

If, however, the policy is to be continued of relying alone upon the Confederate currency, the issue of treasury warrants should
250 be avoided, if possible, for the reasons heretofore given.

If a different financial system is to be adopted, what shall it be?

I confess that the pressure of engagements has prevented me thus far from giving that full attention to the subject which its great importance demands and which is necessary to the formation of views which could be recommended as decided convictions.

But the interest of the State requires that the subject should be thoroughly canvassed, and it might be considered whether the assessments of 1860 or 1861 might not be taken as a basis of value—taxes collected in State treasury warrants, coupons of State bonds at par, specie, and the Confederate currency at its value in the market. Treasury warrants could be substituted for the coupons as they were paid into the treasury and a provision made for funding *made* the warrants in six per cent. bonds whenever too many of them were found in circulation. The fact that the coupons were received in payment of taxes would increase, in all probability, the value of the bonds, and at the same time diminish the amount of specie necessary to redeem the coupons. It might not be necessary to fund any of the treasury warrants for some time to come, perhaps not until the war shall end, as they would become a circulating medium and be sought for by the tax-payer. Under such a system the taxes might be greatly diminished and yet be of greater value. It is not my purpose to elaborate, but merely to call your attention to this subject.

I am aware that it would require time to depart from the present system, and to put into operation such *an* one as is indicated above. There would be difficulties to overcome. It would practically be found difficult to determine the value of Confederate notes in a manner satisfactory and just to all portions of the State. The government would have to be provided for until taxes could be collected under such a system, and how far the
251 present currency and the new issue will meet the want and in what manner it should be employed for the purpose would be for your consideration. The taxes that may be remaining in the treasury on the first of July will be diminished in amount one-third by the operation of the law of Congress, unless funded in the six per cent. Confederate bonds.

It is at all times important to sustain the credit of the State, and now that we are so isolated from the government at Richmond, it is even more so. Her credit in the progress of this struggle may not only be essential to the safety of the State, but important to the whole Trans-Mississippi department. It should, therefore, be guarded and cherished with great care. The resources and position of the State will enable her to carry a very large debt should it become necessary; and it is for you to determine whether the interest on the bonds outstanding shall be regularly paid or not. It is im-

portant that it should be done, and it can be, provided the State is unembarrassed in a judicious plan of purchasing and disposing of cotton.

The plaintiff next read in evidence, over the objections of the defendant, as is shown by bill of exception No. 10, the message of Gov. Murrah, dated October 20th, 1864, to the second extra session of the tenth legislature, as follows:

Governor's Message.

EXECUTIVE DEPARTMENT,
AUSTIN, TEXAS, *October 20th*, 1864.

Senators and representatives:

I have convened you again in extra session mainly with reference to the finances of the State. I regretted the necessity, but I believe that the public interests imperatively require it.

The treasury warrants authorized to be issued by the law ap-
252 proved on the 28th day of May last are rated so low in value that they will, in all probability, fail to accomplish the end designed by your legislation. They are quoted at this time in market at from eight to ten cents on the dollar. Before another regular session of the legislature nearly, if not quite, two millions of these warrants, under the operations of that law, would be outstanding as a debt against the State, to be funded in bonds and ultimately to be redeemed in specie, and yet from present indications not over ten cents on the dollar will be realized to the State in the objects proposed. The plan provided for keeping up the value of these warrants is not attended with the requisites and conditions necessary to make such a plan efficient. It would be necessary, in order to make the plan successful in preserving the credit of the State and to keep up the value of these warrants, to satisfy the public mind in advance as to the quantity of specie that could be controlled for the purpose named in the law and as to the period at which it could be so employed. The assurances that specie may be so used when it may be found in the treasury is not a sufficient guaranty to inspire the necessary confidence. I consider that experience has established that treasury warrants at the present time can only be kept up at a just appreciation by creating for them a general and constant demand approximating to the amount issued. The 8 per cent. bonds now outstanding, on which the interest has been regularly paid except for a short period since the first of July last, are rated in the market at 25c. on the dollar or less, and yet the law has been observed in discharging the interest upon them. There is much more certainty both as to the proportion which the specie interest bears to the amount of these bonds and as to the regularity of its payment than is given to the public mind in the law referred to, as to the amount of specie to be used and the periods when to be used in the purchase of these warrants. It follows, then, that if these issues from the treasury are to be made

in the future and the credit of the State preserved, that a plan must be devised which will create for them a constant and general
253 demand, approximating to the amount to be issued.

I was exceedingly anxious to carry out in full the law referred to and had arranged my plans and made every effort to do so in order to secure the credit of the State and to give value to the warrants authorized to be issued mainly for the support of the dependants of officers and soldiers. This was the sole means provided for the support of the civil government and the class of indigents already referred to, and to diminish the value of these warrants was, of course, to diminish the value of the support. These warrants were in fact to supply the place of the C. S. notes of which you anticipated the treasury would be deprived as an available fund for a time by the legislation of Congress upon the currency. Previous to that time the State had been relying almost exclusively upon the Confederate currency to meet her appropriations and discharge her obligations.

Circumstances, some of which have been already made known to the public, prevented me from carrying out the provisions of that law only in part. Exhibits (A) and (B) herewith presented will furnish you with some of the reasons which influenced me. They were founded in what was represented to me to be the absolute and pressing necessities of the soldiery. In ceasing to execute the plan which I had inaugurated, save in part, I yielded to what I believed at the time, all things considered, the best for the country.

As the objects proposed by this law cannot be realized, it should be repealed and other measures resorted to which will be more efficient.

Your anticipations did not fail as to the result which the legislation of Congress on the currency would have upon the funds in the State treasury, but since your adjournment an act passed by Congress on the 4th of June last extended to the State the privilege of exchanging one-half of the Confederate notes of the denomination of one hundred dollars for the new issue, instead of funding in bonds.

254 On the 31st of August last there was in the treasury $1,983,238.56 in Confederate notes over the denomination of five dollars and $25,065 of the denomination of five dollars and under, and of this amount nearly one million and a half was of the denomination of one hundred dollars. Of this entire sum $1,539,338.82 stands to State revenue account. You are respectfully referred to the annual report of the treasurer and to the accompanying statements of the comptroller. It will be seen from this that there is no money in the treasury available for the ordinary expenditure of the government, nor can it be made available until exchanged for the new issue. When this exchange can be made I cannot inform you. The Hon. P. W. Gray, representative of the C. S. treasury, gives assurance that the exchange will be made so soon as he is supplied with the new issue for that purpose, but it is uncertain as to the time. There is also due to the State, in the new issue, from the Confederate government over one million of dollars for products of the penitentiary and other property sold within the last few months.

But when this will be paid is not known, although efforts have been made to gain the information and to collect it. It is to be hoped, however, that these funds will be obtained before a great while.

What is to be the value of the new issue when put in circulation and what new changes and regulations Congress may make in the laws regulating the currency are matters of uncertainty, and furnish additional and serious embarrassment in considering the finances of the State and any future policy in regard to them, dependent as they are and have heretofore been upon that currency. Since the commencement of this struggle the State has relied almost exclusively upon Confederate notes in the discharge of her obligations and in conducting her public affairs. This policy has been observed for the purpose of upholding and sustaining that currency, and in order to co-operate in every practicable way to give strength and credit to the Confederate government.

255 We have reached a point connected both with the finances of the State and the currency of the Confederacy that makes it absolutely necessary to consider and determine again whether this policy can longer be exclusively pursued, and the State government sustained, and her obligations and duties discharged. So long as this contest shall continue for all that is dear to us as a people, the same policy shall be observed, so far as consistent with cares and duties devolving upon the State and inseparable from her as a State. A departure from it must be authorized and demanded by necessity in order to be reconciled to sound policy, and such is the feeling of the people and of the authorities of Texas. But the force of changes must be recognized and facts met and dealt with as they present themselves.

One of the leading cares and duties devolved upon the State government at this time is to provide support for the indigent and dependents of soldiers. This is an obligation which she cannot neglect. It is a measure directly connected with the prosecution of the war, and the support of the family of the soldier is as necessary as is the support of the soldier. If his family suffers, he will suffer. The means provided for the accomplishment of this object should be adequate and certain. The duty of providing these means, in the main, is devolved directly upon the State government, and the burden should be equally borne by all the taxable property of the State. To leave the support of this class of persons exclusively to the counties would be unjust and oppressive to many of them. The number of those for whom provision must be made by the public is not in proportion to the amount of the taxable property in the respective counties. Harrison, for instance, pays taxes on $8,156,942 worth of property, and yet the dependents to be provided for in that county number only 897, while Henderson county pays a tax on property to the amount of $1,923,710 and the dependents in that county number 789. Such disproportion between the property and the number of the indigent exists throughout the counties of the State. The number to be provided for is 74,000.

256 How, then, is provision to be made for this class of needy and in what shall it be provided? Will you make the provision in Confederate money? Is not this currency too uncertain

in value to admit of any reliable calculations as to the permanency or adequacy of any provision depending on it? It is confidently believed that the new issue of Confederate notes will be of far greater value than the old, and yet this belief cannot be relied on as a basis for certain calculation. There is another thought which should not be overlooked in considering this subject. The Confederate currency has been and will, in all probability, continue to be of much less value in the purchase of the necessaries of life in some portions of the State than in others. In consequence appropriations made for a given number of dependents in one section are not equal in value to a like appropriation made for the same number in another section. This condition of things has been brought about by facts over which these dependents had no control, and which the State itself could not control. It is certain, therefore, that if an adequate provision is to be made for this object in Confederate notes, that the appropriation must be greatly increased, but how much increased in consequence of the uncertainties already referred to it is impossible to determine with any degree of certainty. An increase that would be sufficient in this appropriation will involve the necessity of increased taxation.

In providing for an increased tax, it is for you to determine whether this money shall be collected and paid out without reference to its value or whether it shall be collected and paid out at a fixed rate, some basis of value being established. This subject was before you at your former session, and further suggestions from me are deemed unnecessary. It is not deemed improper, however, to say that I do not consider the value of the new issue as yet fixed, and that it may be better than might be inferred from present quotations when the full effect of the laws of Congress upon the currency shall be made known.

257 Can any other plan be devised by which this object can be accomplished and save the necessity of the use of increased quantities of Confederate notes or a resort to new issues from the State treasury? If so, it would be most desirable.

The only substitute for a tax in money for this purpose is a tax in kind on the products of the soil, and such a tax, as it seems to me, will be attended with great difficulty. There is already a tax of this character imposed by the Confederate government. An additional one levied by the State will complicate the system and embarrass its execution; and it will also be found a difficult task to proportion a tax on property not devoted to agriculture, and on incomes from other sources to the value of the tax imposed upon the production of the soil and, besides, the collection and distribution of such a tax, if imposed by the State and made uniform, would be attended with serious inconveniences, if practicable at all. The largest amount of supplies, if thus collected, would be in counties where least needed and the smallest amount, in many instances, in counties where most needed. This would involve the necessity of transporting from one county to another, and a redundant supply would often be found too remote for transportation to points where a deficiency might exist, and hence would arise the necessity of

disposing of the productions where they could not be consumed, or of not collecting them at all. These considerations, as it seems to me, would render this system unsatisfactory and unacceptable, and yet it deserves full consideration.

Owing to the depreciation of the Confederate currency and the embarrassments connected with the treasury from that cause, the support of the civil list of the State government merits your most serious consideration. If the salaries of the officers and employés are to be paid in that currency, without any increase in the amount, they will be merely nominal in value, as the money is now depreciated and it becomes a serious question whether the affairs of the government can long be conducted with proper efficiency and vigor.

If the contingent expenses are also to be provided for in this cur-
258 rency they can only be discharged at its market value. The civil list proper requires about $300,000 annually, and at thirty for one in specie this sum equals only $10,000, and yet for months past, in a large portion of the State, those receiving this money from the treasury at par have been forced to pay it out at this rate of depreciation and often greater. Other States, as I am informed, though not with accuracy and certainty, have been forced to recognize this depreciation and to conform their policy to it by providing for additional pay for their officers and employés. The Confederate government, influenced by the same cause and by the same necessity, has provided additional means for the support of its employés and its officers in the field. The officer, as I understand, is now allowed a daily ration and the privilege of purchasing another at the cost of the government and also clothing at the same cost, but as to the amount I am not informed; and, besides, when stationed in a town or city he has commutation for quarters, wood, etc., which affords him additional means of living. It is true that the pay of the soldier is nominal, but he is fed, and the clothing that he is compelled to purchase is procured at its cost to the government. The employee of the State government has no such privileges, and no such provision is made for him, and the money which he receives for his wages or salary he is forced to pay out at its depreciated rates for the means of living. This oppression to the employé in the civil departments of the government does no good to the soldier and furnishes him with no additional comforts. Indeed, the State employé is often himself a disabled soldier or one unfitted for service in the field and is yet employed in service essential to the conduct of public affairs. At present many a tax-payer who receives Confederate money at its market value pays it into the treasury in discharge of his taxes at par, and it is paid out at par by the government in discharge of her obligations, and of course the loss by depreciation falls upon its creditors and servants.

259 It is true that all tax-payers do not receive this money at so great a depreciation, but it may be said that nearly all receive it with a greater or less depreciation allowed upon it.

Why this course of policy should be continued or considered just is difficult to perceive. The people have not surely lost interest in having their State government properly supported and conducted, and

I cannot believe that with a proper understanding of this subject that they will be unwilling to provide the necessary means. To sustain the organization of the State government in completeness and vigor and to enable it to discharge its duties promptly and justly is not to weaken but to strengthen the cause in which we are engaged; it is not to produce but to prevent confusion in public affairs; it is not to oppose but actually to co-operate with the Confederate government in all that involves the public interest, for the duties and obligations devolved upon the State are different from those devolved upon the Confederate government, and yet their discharge is essential to the welfare of the people. In considering the additional amount in this currency necessary for the purpose under discussion the same embarrassments are met which were enumerated in alluding to the subject of the support of soldiers' families. But to recognize the depreciation of the Confederate currency is not to depreciate it, but only to recognize an existing fact in order to regulate a policy according with it.

Congress was forced to recognize the depreciation of the currency before measures could be adopted to remedy the evil, and it is to be hoped that the measures already adopted, and those that may hereafter be, will be ultimately successful in accomplishing a result so essential. There is patriotism enough in the people to sustain any measure necessary to this end, and for the accomplishment of an object so closely interwoven with the cause of our country let citizen and public servant zealously labor and co-operate together.

260 A plan should, if possible, be devised which could, with reasonable certainty, be relied upon to support both the government of the State and the indigent dependents of soldiers, and which will, at the same time, be as little oppressive to the people as possible. The support comes from the people and must come in some form or other. Should you fail to adjust a satisfactory policy for the State finances based upon Confederate currency, I respectfully ask a full and mature consideration for the following suggestions. Authorize the issuance of treasury warrants in sufficient quantities for the accomplishment of these purposes and the support of the asylums and impose a tax which will annually absorb a certain proportion of them. The warrants issued for these purposes would be distributed to all the counties of the State, and thus be placed in reach of the tax-payers. A constant and general demand for them would be created and a tax which would absorb annually, say, three-fourths of the amount issued or a smaller proportion would perhaps be sufficient to keep them up at a high value. It is believed that one million or one million and a quarter of dollars annually in warrants, if their value can be well sustained, will accomplish these objects in connection with other provisions that will be suggested for the benefit of families of soldiers. Set apart a given amount of the products of the penitentiary, say one-third, and if that is not sufficient, more, for the benefit of the different counties, according to the number of dependents to be provided for. For those counties that do not apply for their

proportion of the goods, let the goods be sold and the proceeds distributed to them. At present, while some counties receive products from the penitentiary, others do not, and they receive nothing as an equivalent. These goods might be sold, if thought best, for the treasury warrants proposed to be issued; but the interest of the counties for whose benefit they may be sold should control in this matter.

261 In addition to this, give to the counties as large a discretion as can be given under the constitution to levy just such a tax for the benefit of these dependents as is best suited to the condition of the county in respect to currency productions, &c. The limit of the tax must of course be fixed by law, but beyond that the discretion should be as unlimited as possible, or a tax which would be valuable in one county and in one section of the State would not be valuable or available in another. Caldwell county is already empowered by law to levy a tax in specie for the purpose under discussion, and the chief justice informs me that the end is well accomplished and the people satisfied.

The State possesses other resources through which the treasury warrants proposed to be issued might be absorbed without imposing a tax and their value preserved, some of which could be made entirely reliable for this purpose and others not altogether so much so. To some of these I will refer, but cannot recommend a resort to them for the reasons which I shall give.

Land scrip might be sold and payment in them received, but sound policy forbids the issuance of land scrip until the war shall end and our citizen soldiery return home. Real estate is known to be at a low estimate at this time, and scrip would have to be sacrificed if sold. The consequence would be that they would fall into the hands of the money dealer and the land speculator and be hoarded for future profit, and the public domain would be thus frittered away and but little advantage received in return to the State. I have not changed my view that the public domain should be reserved and guarded for the purposes named in a message heretofore delivered to your honorable body.

All the products of the penitentiary might be disposed of for these warrants, but this would deprive the soldiery in the field of them. The demand for these goods on the part of the army is constant and urgent. The representations that they are needed for the

262 benefit of the soldiery come not only from the headquarters of the Trans-Mississippi department, but from officers of Texas in command of Texas troops. If this necessity does exist, the soldiery should not be deprived of these goods. If it were certainly known that the Confederate authorities could for the future provide a sufficient amount of clothing for the army, these products might then be disposed of in the manner mentioned. But the condition of things in this department does not warrant a reliance on this so strong as to authorize a policy which would cut off our soldiery from what clothing they may receive directly from that institution. I believe that after fixing by law the proportion of the products to be reserved for the benefit of the families of soldiers that the

remainder should go to the army, as heretofore. This conclusion is based upon the constant and strong representations made to me as to the necessities of the soldiery, as above stated. If you have doubts as to the soldiery receiving the benefit of those products, make such regulations as will secure the benefit to them. I believe myself that they go to the benefit of the army; but whether the application of them is always most judicious or not I cannot say. It will be considered that there are other pecuniary obligations imposed on this State besides the discharge of the civil list and her obligations to the families of soldiers, and the means for discharging these obligations can be derived from the penitentiary by observing the plan indicated.

The frontier organization is to be provided for and paid, and there are many other requirements of the State that involve the expenditure of money. The special loan tax levied in specie to pay the interest on State bonds might be collected in these warrants and would absorb about $80,000 annually. If the interest on railroad bonds was collected in them, it would absorb about $104,000 annually, but no certain reliance can be placed on the collection of this interest in the absence of compulsion of law.

263 The supposed assessment of taxable property for the year 1865 will reach $400,000,000. A tax of fifteen cents on the one hundred dollars on this amount of property will yield $600,000. This, together with the tax of four cents on the one hundred dollars referred to above, would amount to $680,000 and would absorb that amount of treasury warrants if the tax was collected in them, and this amount might be still increased by the occupation tax.

In this connection the tax imposed upon the sale of liquors should be fully considered. It is said that the law now in force in regard to the tax upon the sale of ardent spirits is evaded and disregarded almost universally, and that it neither prohibits the distillation of grain into ardent spirits nor does it yield the revenue that might be expected to the treasury. If such be the fact with regard to this law, it accomplishes no good as it now stands upon the statute books. If it prohibited the distillation of grain, it should remain as it now exists. If, however, the distillation and sale of ardent spirits cannot be prevented, they should be made to pay a heavy tax and might thus be made important in absorbing the State paper. This would still diminish the ad valorem tax necessary to the absorption of the warrants that might be issued should this plan be adopted. Should this plan be adopted, it will be necessary to guard against too heavy a tax upon them at first and the collection of it at too early a period in order to avoid oppression thereby.

Were this plan adopted, and if these estimates and calculations be reliable, the collection of taxes in Confederate money might, for the present, be suspended and the people burdened only with a very light tax on account of the State.

To complete this system and to place the credit of the State on a proper basis provision should be made for funding in bonds all the outstanding treasury warrants or for absorbing them in some other

way. These bonds might be made to mature at such periods
264 as you might — best for the interest of the State, to draw interest at 6 per cent. from date, but the interest not to be paid until the conclusion of the war. The policy of receiving them in liquidation of railroad bonds and interest thereon might well be considered.

Military authorities of this department have frequently requested that military prisoners who have been condemned to hard labor during the war should be received as laborers into the penitentiary. There was no authority or law for granting this request, and I therefore declined to do so. I did not consider it impolitic, however, that prisoners condemned to labor for a sufficient length of time to make them useful should be received in the penitentiary to supply the places of the convicts whose term of service in that institution might expire. The superintendent, influenced by these considerations, but without authority from me, has received into that institution quite a number of such prisoners, and represents that they make good laborers. I suggest that the authority of law be given for receiving and confining to the penitentiary as laborers such numbers of these prisoners as may be useful in the institution, and no more.

I again call your attention to the consideration and propriety of extending to the financial agent and the directory the authority to increase the capacity of the institution by the purchase and introduction of 1,300 additional spindles, which they represent could be usefully and profitably employed.

The assessment and collection of taxes is said to be very imperfectly performed, and that the State treasury, in consequence of this, suffers greatly. Whether this failure results from the inefficiency of the laws relating to assessors and collectors or from their failure to perform their duties under the laws is a matter that should engage your serious attention. It is but just that all property should be assessed and the taxes paid thereon according to the pro-
265 visions of the law. If the assessors and collectors are in fault, penalties should be provided which will insure the performance of duty on their part. The amount of specie, for instance, rendered on the assessment-rolls for 1864 is $1,595,134, and the specie tax paid on the sale of merchandise up to the 31st of May amounts only to $812.36. This certainly falls far short of the amount of specie that is supposed generally to exist in the State, and the amount of merchandise sold for it. According to the general impression as to the amount of specie in the State there should be derived from the two sources above named a sufficient amount to pay the interest on the State bonds. Whether these impressions are correct or at fault I know not. If they be correct, the failure lies in the assessment and collection of the tax.

The subject is of sufficient importance to claim your full attention and, if remedies can be provided for the evil, they should be provided. I do not know that any measure short of a thorough change of the laws on that subject will accomplish the result.

I respectfully invite your attention again to the subject of the

military board. The duty of procuring specie to pay the interest on the State bonds to procure arms and munitions of war for the frontier organization could, with more propriety, be devolved upon the board and the means placed at their disposal for these purposes which are now placed at the disposal of the executive, and, besides, the duties now devolved upon the board require more means than is provided for them and a larger discretion in the purchase of cotton through the medium of which a loan, the object proposed by existing laws, can be accomplished. It is not believed that proper efforts to accomplish these objects could cease with justice to the State or to the people in the present condition of things. To accomplish these objects with certainty the board should be empowered to purchase cotton partly with specie and partly with bonds, and in this way, notwithstanding the change in regulations with regard to the cotton trade by judicious management, the bonds that may be employed can be realized to the State at par in specie
266 or its equivalent. I do not commend a large trade on the part of the State in cotton, but a trade commensurate only with the absolute necessities of the State and the people. The necessity for cotton and wool cards still exists, and the purchase and introduction of them should still be continued, and when sold they should be sold to the counties for the benefit of the needy at the cost of the State.

And it might well be considered whether medicines might not be introduced to be disposed of in the same way by the board. There are representations coming to me from every portion of the State that there is great suffering in consequence of the want of medicines, and that they cannot be procured without the aid of the State in a direct or indirect way.

I on a previous occasion called your attention to the consideration of the propriety of declaring subject to military duty to the State all those not liable to duty to the Confederate States and under the age of sixty. If deemed unnecessary to organize such a force in the respective counties at the present time, provision might be made for organizing them when the necessity should become apparent. When such a necessity may present itself cannot be foreseen, and yet prudence dictates that we should be prepared for any emergency that may present itself. God is with us in this fearful struggle, and if true to ourselves we cannot fail of success.

P. MURRAH.

To correct statements in records offered in evidence in which the payment of $6,670.00 was stated to have been made on March 30, 1864, in "State money," plaintiff next introduced in evidence copies of deposit warrants certified to by the comptroller of public accounts under his seal of office as follows:

267 No. 907. *Duplicate Warrant.* $6,670.00.

The treasurer of the State of Texas will receive from Houston & Texas Central Railroad Company—

In Confederate notes..... ..... $
In State warrants..... 6,670.00
In specie .....
——— $6,670.00

Making the sum of sixty-six hundred and seventy dollars, and credit to account of school fund for bal. interest on bonds to Mar. 1, '61, and on acc. of 1862.

C. R. JOHNS,
Comptroller.

Comptroller's office, Austin, March 30th, 1864.

Endorsed.

TREASURER'S OFFICE,
AUSTIN, TEXAS, *March* 30, 1864.

Received of H. & T. C. R. R. Co. on account of interest due on the bonds of the company the within-specified sum.

C. R. RANDOLPH, *Treasurer.*

This was offered to show that "State money" meant State warrants, the deposit warrant being the paper on which the original entry was made.

No. 908. *Duplicate Warrant.* $15,009.92.

The treasurer of the State of Texas will receive from Houston & Texas Central Railroad Company—

In Confederate notes..... $
In State warrants..... 15,009.92
In specie .....
——— $15,009.92

Making the sum of fifteen thousand & nine $\frac{92}{100}$ dollars, and credit to account of school fund acc. of int. on bonds to 1st Mar., 1862.

268 JAS. W. HOWARD,
Ch'f Cl'k & Act'g Comptroller.

Comptroller's office, Austin, April 19th, 1864.

Endorsed.

TREASURER'S OFFICE,
AUSTIN, *April 19th*, 1864.

Received of W. J. Hutchins, pres't, on account of int. on railroad bonds, the within-specified sum.

C. H. RANDOLPH, *Treasurer.*

No. 909. *Duplicate Warrant.* $4,000.00.

The treasurer of the State of Texas will receive from Houston & Texas Central R'l R'd Co.—

In Confederate notes..... ..... $
In State warrants..... 4,000.00
In specie .....
——— $4,000.00

Making the sum of four thousand dollars, and credit on account of school fund acc. of interest on bonds to Mar. 1st, 1862.

JAS. W. HOWARD,
Ch'f Cl'k & Act'g Comptroller.

Comptroller's office, Austin, April 19th, 1864.

Endorsed.

TREASURER'S OFFICE,
AUSTIN, *April 19th*, 1864.

Received of W. J. Hutchins, pres't, on account of int. on railroad bonds the within-specified sum.

C. H. RANDOLPH, *Treasurer.*

269 EXECUTIVE DEPARTMENT,
COMPTROLLER'S OFFICE, AUSTIN, TEX., *Feb'y 1st*, 1896.

I, R. W. Finley, comptroller of public accounts in and for the State of Texas, do hereby certify that the foregoing attached three pages contain true and perfect copies of duplicate deposit warrants Nos. 907, 908, and 909, for the following amounts respectively: # 907, for $6,670.00; No. 908, for $15,009.92, and No. 909, for $4,000.00, issued to the Houston & Texas Central Railroad Company for account of interest on bonds held by the school fund on the respective dates as follows: No. 907, March 30th, 1864; No. 908, April 19th, 1864, and No. 909, April 19th, 1864, together with the endorsements thereon as the same remain on file in this office.

In testimony whereof I have hereunto signed my name and caused the impress of the seal of the comptroller's office to be affixed the day and date in this certificate first above written.

[SEAL.] R. W. FINLEY,
Comptroller.

The plaintiff next introduced in evidence, over the objections of the defendant, direct interrogatories Nos. 10 and 11 propounded to and the answers thereto by E. W. CAVE, whose depositions were taken on behalf of the plaintiff, and also offered the treasury warrant attached as an exhibit to said deposition and as a part of said answers; which interrogatories, answers, and exhibit are as follows:

Int. 10. Have you any of these warrants now in your possession, to you accessible? If so, please attach a substantial copy of one or more of them of the smallest denomination you have to your answer

hereto. If you know where they are, but have none at hand, kindly take time enough to examine same and procure a copy, or, if not a copy, give a description of them covering the following points: Dates of said warrants, the denomination thereof; when payable, if not payable on demand.

In answer to Int. #10 the witness says: I have never seen any of the treasury warrants which were paid by the Houston &
270 Texas Central Railway Company to the State of Texas on account of the indebtedness due the State of Texas by reason of the lending if the special school fund by the State, nor are they in my possession or accessible to me. As I have said in my answer to previous interrogatories, I am without knowledge of the kind or character of warrants used by the Houston & Texas Central Railway Company in making the payments referred to. I suppose that those warrants so paid were retained by the treasurer of the State of Texas. As it does not seem reasonable to suppose that I would have in my possession the State treasury warrants that were actually paid into the treasury of the State of Texas by the Houston & Texas Central Railway Company, I am at some doubt as to what warrants are referred to. It is proper I should say there came into my custody, after I became treasurer of the Houston & Texas Central Railway Company, some old Texas State treasury warrants issued by the State of Texas during the period inquired about. I attach one of these State treasury warrants of the smallest denomination, marked on the back in red ink "A," as part of my answer to this int'y, being treasury warrant # 8550 for $1.00, payable to "R. A. Reeves or bearer," issued of date "Austin, Apr'l 4, 1862;" but I am altogether without knowledge whether this State treasury warrant hereto attached is of the same character as those paid into the treasury of the State of Texas by the Houston & Texas Central Railway Company on account of indebtedness due the special school fund.

Int. # 11. Did you at any time see any of the treasury warrants delivered to the State of Texas by any railroad company or which had been so delivered in payment of an indebtedness due the special school fund? If you did, by what road? What were the amounts and denominations of the warrants so delivered?

Answer to Int. # 11 as follows:

I did not at any time see such warrants delivered to the State of Texas or which had been so delivered in payment of an indebtedness due the special school fund.

271 EXHIBIT "A" ATTACHED IN PART ANSWER TO INT. #10, SUPRA.

Treasury Warrant. One. I.

Receivable for

No. 8550. Appropriation 9 P.

Under act of Feb. 11, 1860, for civil service, the treasurer of the State of Texas will pay one dollar to R. A. Reeves or bearer.

Comptroller's office, Austin, Ap'l 4, 1862.

C. R. JOHNS,
Comptroller.

H. H. Haynes.

State dues.

Endorsed on the back: "A." C. H. Randolph, Tr. F. B.

(To the above questions and answers of the witness Cave and to the exhibit accompanying same counsel for defendant objected in so far as the same was offered as evidence to show the kind and character of warrants used in making the payments in question, as shown by bill of exception # 18.)

The plaintiff next introduced W. C. MCCALL as a witness, who, after being duly sworn, testified in effect that he was employed in the comptroller's department and had been so employed about eighteen months, and that he had been, at the instance of the attorney general, assigned by the comptroller, together with G. A. Proctor, to the duty of searching for evidence of the character of the warrants in which the payments in question were made; that he had been unable to find any data or memoranda of any kind showing the kind or character of warrants used in making such payments; that there was a large number of old warrants, purporting to have
272 been issued during the war, in the basement of the comptroller's office without any endorsement or writing on them to indicate and he was unable to find any data or memoranda to indicate by whom or for what purpose or on what account such warrants were received or from whom they were received; that he had not examined all the warrants in the basement, but, at the request of the attorney general, representing the plaintiff in this case, had taken from the lot a number, which he then produced and identified as those taken by him from the basement of the comptroller's office shortly before the trial.

I took them out of a batch just as I came to them. I made no effort to select any particular kind of warrants.

The State then offered in evidence the warrants about which the witness testified and which he identified.

Counsel for the State saying that same were offered to show the character of the warrants issued during the war, and that they were suitable in size, shape, and denomination for use as money, and show that many of them were issued in aid of the rebellion, as well

as to be circulated as money. The attorney general further stated that he wished the record to show that many warrants similar to those offered were then in the basement of the capitol, in the custody of the comptroller, and that he was willing for counsel for the defendant to have free access to them for *that* purpose of examination, as they doubtless have heretofore examined same. He said, "I cannot undertake to bring them all here; it would be too laborious. At the same time I do not wish it to appear that I am selecting certain warrants to offer in evidence without offering to the other side facilities to get such as they may wish to introduce."

Thereupon, over the objections of the defendant, as shown by bill of exceptions No. 19, in connection with said witness' testimony, counsel for plaintiff introduced in evidence the treasury warrants produced by said witness, as follows:

26 warrants issued at various dates during the year 1863 for the sum of $100 each, payable to various persons therein named
273 or bearer, of which number of warrants 13 were for military service and 13 were for civil service.

2 warrants issued at various dates during the year 1862 for the sum of $50 each, payable to various persons therein named or bearer, both of which warrants were issued for military services.

3 warrants issued at various times during the year 1863 for the sum of $50 each, payable to various persons therein named or bearer, two of which purport to have been issued for civil services and one for military services.

One warrant issued during the year 1863 for the sum of $30, payable to a person therein named or bearer and which purports to have been issued for civil services.

59 warrants issued at various dates during the years 1862 and 1863 for the sum of $20 each, payable to persons therein named or bearer, of which number of warrants 34 purport to have been issued for civil services and 25 to have been issued for military services.

27 warrants issued during the year 1863, on various days, for the sum of $3.00 each, payable to various persons named therein or bearer, of which 23 purport to have been issued for military services and 4 for civil services.

9 warrants issued at various dates during the year 1862 for the sum of $1.00 each, payable to the various persons therein named or bearer, of which 4 purport to have been issued for civil services and 5 for military services.

While all of the above warrants were issued during the war, twelve of those issued for military services were issued to cover appropriations made by acts passed in 1860, and two of those for civil services were issued under appropriations made in 1860.

In form and general appearance all of said warrants so introduced that were issued for civil services were substantially as follows, varying only in name of payee, date, amount, appropriations acts under which issued, to wit:

274

TWENTY. | Registered: W. S. HOTCHKISS. C. H. RANDOLPH.

20. TREASURY WARRANT. XX.

Receivable for public dues—fundable in eight per cent. bonds.

No. 1734. Appropriation 80 Q.

Under act of Jan. 8, 1862, for civil service, the treasurer of the State of Texas will pay to F. R. Lubbock or bearer twenty dollars.

Comptroller's office, Austin, Nov. 11, 1862.

C. R. JOHNS, *Comptroller.*

[The above warrant cancelled.]

And those for military services (varying likewise) were as follows, to wit:

FIVE. | Registered: H. WINKEL.

TREASURY WARRANT. V.

No. 49288. Appropriation 79 Q.

[Vignette.]

Under act of Jan. 4, 1862, for military service, the treasurer of the State of Texas will pay five dollars to city of Galveston or bearer.

FIVE.

Receivable for State dues.

Comptroller's office, Austin, May 9, 1862.

C. R. JOHNS, *Comptroller.*

[The above warrant cancelled.]

One-half of the warrants offered in evidence will be sent up with the record of this case and as a part thereof for the inspection of the appellate courts, in pursuance of an order made by the district court which tried this case.

On cross-examination, the witness stated that he did not examine all the cancelled warrants in the basement of the comptroller's office; that he didn't know whether the warrants in the basement were all the warrants that were cancelled during the war or not, and that there was nothing there, as far as he knew, to show from what source the warrants introduced in evidence were received by the comptroller and treasurer.

275 The plaintiff next introduced in evidence G. A. PROCTOR, who, after being duly sworn, testified in effect:

That he was employed in the comptroller's office and had been so employed for five or six years; that the old treasury warrants are kept in the basement of the comptroller's office—that is, the warrants issued during the war and some issued since the war. There are a great many cancelled warrants in the basement, but he does not

know how many; that he does not know whether all the warrants cancelled during the war are in the basement or not; that there is nothing on the warrants to indicate when they were cancelled nor when paid. A deposit warrant is a direction from the comptroller to the treasurer to receive a certain amount from a certain person, and a deposit warrant should show that the treasurer received it. That is the custom now; I do not know what it was during the war.

This witness testified in substance also as the witness McCall as to the manner of selecting the warrants offered in evidence.

Among other things, he said: I brought some of the warrants with me offered in evidence. I took them out of a lot in the basement, just as I came to them. They were bundled up then just as they are now; they have been there a long time. In some instances the wrappers have come off them.

In connection with the testimony of this witness counsel for plaintiff read a certified copy of one of the deposit warrants introduced as hereinbefore set forth as follows:

907. *Deposit Warrant.* 6670.

The treasurer of the State of Texas will receive from the Houston & Texas Central Railway Company—

In Confederate notes..... .... $
In State warrants..... ..... 6,670.00
In specie..... ....
——— $6,670.00

Making the sum of six thousand six hundred and seventy dollars, and credit to account of school fund for balance interest on bonds March 1st, 1861, and on account 1862.

C. R. JOHNS,
Comptroller.

Comptroller's office, Austin, March 30, 1864.

276 Proceeding, the said witness testified that a deposit warrant for the payments in question do not indicate the numbers and dates of the warrants used in making such payments; that the entries in the books are made from the deposit warrants, and that he does not know of any evidence in the comptroller's department giving dates or character of warrants used in making the payments in question, the only data from which the entries in the books were made being the deposit warrants.

The said witness further testified that he, with W. C. McCall, had been, at the instance of the attorney general, assigned by the comptroller to the duty of searching for evidence of the character of the warrants in which the payments in question were made; that he had been unable to find any data and memoranda of any kind showing the kind or character of warrants in making such payments; that there were a large number of old warrants purporting to have been issued during the war in the basement of the comp-

troller's office without any indorsements or writing on them to indicate by whom or for what purpose or on what account such warrants were received or from whom they were received; and said witness, proceeding, testified substantially to the same facts as was testified to by W. C. McCall above set forth.

Thereupon, in connection with the said witness's testimony, counsel for plaintiff introduced in evidence, over the objections of the defendant, as shown by bill of exception # 20, the cancelled warrants so taken by the witness from the basement of the comptroller's office as follows:

100 warrants issued at various dates during the year 1862 for the sum of $5.00 each, payable to various persons therein named or bearer, of which 75 purport to have been issued for military services and 25 for civil services.

In form and general appearance all of said warrants so in-
277 troduced that were issued for civil services were substantially as follows, varying only in name of payee, date, amount, and appropriations acts under which issued, to wit:

Receivable for

[Vignette.]

State dues.

Registered: H. WINKEL.

20. [Vignette.]

TREASURY WARRANT.

No. 42520. Appropriation 79 Q.

Under act of Jan. 4, 1862, for military service, the treasurer of the State of Texas will pay twenty dollars to M. Kennedy or bearer.

TWENTY DOLLARS.

Comptroller's office, Austin, Ap'l 30, 1862.

C. R. JOHNS, *Comptroller.*

[The above warrant canceled.]

And those for military services (varying likewise) were as follows, to wit:

FIVE.

[Vignette.]

Receivable for State dues.

Registered: H. WINKEL.

TREASURY WARRANT. V.

No. 96423. Appropriation 82 Q.

Under act of Jan. 14, 1862, for military service, the treasurer of the State of Texas will pay five dollars to I. P. Dumas or bearer.

FIVE.

Comptroller's office, Austin, July 29, 1862.

C. R. JOHNS, *Comptroller.*

[The above warrant canceled.]

One-half of the warrants offered in evidence will be sent up with the record in this case, and as a part thereof, for the inspection of the appellate courts in pursuance of an order made by the district court which tried this case.

On cross examination the witness testified that he did not examine all the warrants in the basement of the capitol; that he does not know whether the warrants now in the basement are all the
278 warrants cancelled during the war or not; that he does not know the mode or method of handling warrants during the war; that the warrants produced by him are similar to others in the basement, as far as his examination extended of them. He didn't examine them all.

Plaintiff next introduced W. B. WORTHAM, who, after being duly sworn, testified in effect that he was treasurer of the State of Texas, and had been for five years, and was clerk and book-keeper in the treasurer's office for 12 or 13 years prior to his election as treasurer; that he had made some examination of the old books in his office, at the request of counsel for plaintiff, for evidence of the date, denomination, and character of the warrants in which the payments in question were made, but learned nothing and knew nothing of the number of the warrants, or the dates or kinds of warrants, that were used in making such payments; that there is nothing upon the cancelled warrants to indicate by whom they were paid in; that he does not know anything about the method of doing business in 1863 and 1864 in the treasurer's office. A deposit warrant shows how much is received and from whom and to whose account it should go. When one wishes to pay money into the treasury, he gets a deposit warrant from the comptroller, made in triplicate. The original the comptroller keeps, the duplicate goes to the treasurer, and the triplicate to the person making the deposit.

Plaintiff next introduced JAS. P. HART, who, after being duly sworn, testified substantially as follows:

That he resided in Austin since 1865; that he remembers the burning of the old capitol; it was some time in 1878. The entire building, except the walls, was destroyed. The State departments were thereupon located in the temporary capitol until the new capitol was finished, about 1887 or 1888; that he knew C. H.
279 Randolph and C. R. Johns, former treasurer and comptroller, respectively. Both are dead. He knew Morgan C. Hamilton, a former comptroller. He also is dead. He knew Gov. Murrah, and understood he was dead. He knew Geo. C. Rives, former comptroller, but does not know whether he is living or not. He also knew Gov. A. J. Hamilton and Gov. E. J. Davis. Both are now dead. Ex-Gov. Throckmorton also died 2 or 3 years ago.

On cross-examination the witness testified that Ex-Comptroller Johns died about ten years ago; that Morgan C. Hamilton died in 1895; that Ex-Treasurer Randolph died some time in 1889 or 1890; that Ex-Gov. Throckmorton died about 2 years

ago; that Ex-Gov. Davis died about 1885. There were vaults in the old capitol in the treasurer's and comptroller's office. A great many records were preserved from the burning of the old capitol.

It is agreed that Ex-Gov. E. M. Pease is dead, and that he died subsequent to 1880, and prior to the institution of this suit.

Defendant's Evidence in Rebuttal.

R. S. LOVETT, a witness for defendant, testified in effect that his firm were general attorneys for the defendant company.

The witness testified that he had been specially charged by his associates with the preparation of this case for trial; that he had called upon the treasurer and comptroller of the State of Texas for information respecting the character, date, and denomination of warrants used in making the payments in controversy, and asked for copies of any records of their respective departments giving such information, but that he was informed by said comptroller and treasurer that they were without such information, and it was not disclosed by any records of their departments; that he made diligent effort to find some official or employé of defendant or person
280 having knowledge of the kind and character of warrants used in making such payments, but that he had been able to find no such person, and no such person who was connected with defendant at the time such payments were made.

(Part of the evidence of this witness offered by defendant was excluded, as is shown by bill of exceptions No. 2.)

The defendant next introduced GEO. KIDD, who, being duly sworn, testified:

That he was auditor of the Houston & Texas Central Railroad Company, the defendant, and as such had charge of its books and papers and was familiar with them; that he had made diligent search of the books and the records of defendant company to ascertain whether there was anything therein to show the date, character, or denomination of the warrants used in making the payments in question, and that he had found nothing whatever in reference thereto.

On cross-examination he testified that the books showed the fact, dates, and amount of payments in warrants, but not the kind, character, or denomination of the warrants.

He also testified on cross-examination that he did not know who was auditor of the Houston & Texas Central Railway Company when such payments were made; that the witness had been auditor of defendant company a little over one year and had succeeded his brother, who now resides in Houston, in that position. H. Hall was auditor before his brother held the position, and witness thinks he filled it as far back as 1867 or 1868. He is now dead. Witness does not know of any one now living who was connected with the Houston & Texas Central Railway Company at the time said payments were made.

On redirect examination witness testified that he had been employed in the auditor's office since 1885 and was 2 or 3 years general book-keeper.

281 On recross-examination he stated that his duties rarely required him to go back to the books of 1864 and 1865, and that his work had more to do with current business than with the past.

Defendant next introduced in evidence the depositions of E. W. CAVE, taken by the plaintiff, but of which the plaintiff offered only direct interrogatories 10 & 11 and the answers thereto above set forth, the testimony of said witness by deposition being in full as follows, except interrogatories 10 & 11 and the answers thereto and Exhibit "A" thereto, as hereinbefore set forth :

My name is E. W. Cave. I am an adult citizen of the State of Texas, residing in Houston, Harris county, Texas. I am in railway service.

I entered the civil service of the State of Texas in 1859, residing then at Austin, Texas. In 1861 I removed from Austin to Galveston, Texas, and engaged in the newspaper, printing, and publishing business, being also an editor. About 1862 I removed to Houston, Texas (where I have since had my residence), and continued the printing and publishing business, having disconnected myself with newspaper publication and editing. During the latter part of 1864 and until the fall of 1865 I was out of the State of Texas. I was also during a considerable part of the war in or connected with the military service of the Confederate States. After the close of the war my business connection was extended to embrace the book, stationery, and notion business. About 1870 I went out of that business and became identified with the development of the tide-water communications of the city of Houston, Texas, and with which I am still identified. About 1875 I became connected with the railway interests in Texas and am still connected with them.

I became treasurer of the Houston & Texas Central Railway Company in March, 1877. I continued as such until receivers were appointed for that company in 1885. I was appointed treasurer of the receivers and continued as such during the receivership. I have been secretary and treasurer of the Houston & Texas Central

282 Railroad Company since April, 1893, having previously been treasurer of said company since September, 1889.

I do not know, of my own knowledge, whether or not the Houston & Texas Central Railway Company acquired or held any treasury warrants issued by authority of the State of Texas from and including 1862 and up to and including 1865. I had no connection with the Houston & Texas Central Railway Company in the time stated, including 1862 and up to and including 1865.

I have no knowledge of the kind or character of warrants used by the Houston & Texas Central Railway Company in making the payments in treasury warrants on account of its indebtedness to the school-fund loan during the war.

I cannot give the market value of the treasury warrants issued by

the State of Texas during the war, nor can I state as to their market value on a basis of specie coined by the United States of America. People of the State of Texas were involved in a war with the Government of the United States, and my recollection is that the specie money coined by the United States practically ceased to be in circulation among the people of Texas soon after the war commenced. After some time, in some of the towns near the coast, specie, mainly of Mexican and Spanish coinage and foreign exchange (except on points in the United States), could be had; also in the trading towns of Texas on the Mexican border. I cannot state what the value of the Texas State treasury warrants was on a basis of such specie or foreign exchange. According to my recollection the exchangeable value of State treasury warrants with such specie or foreign exchange at the points where specie was a factor in business did not furnish any index of the value of the State treasury warrants in the interior of Texas, where there was little or no specie, and business was not conducted on that basis.

I have no knowledge as to the kinds of warrants used by the Houston & Texas Central Railway Company in making the
283 payments in question. I had no connection with that company at that time or with the treasury department of the State of Texas.

(For the answers of the witness to direct interrogatories 9 and 10, see the testimony of plaintiff in rebuttal.)

In answer to the cross-interrogatories the witness testified that he was at one time secretary of state of the State of Texas; was secretary of state during the administration of Governor Sam. Houston, who was inauguarted in December, 1859.

(The answer of the witness to cross-interrogatory No. 2 was, upon the objection of plaintiff, excluded by the court, as shown by defendant's bill of exceptions No. 21.)

The witness further testified in answer to cross-interrogatories that he did not know when or for what purpose the treasury warrants issued by the State of Texas and paid in by the Houston & Texas Central Railway Company, the Washington County Railroad Company, or the Buffalo ——, Brazos & Colorado Railroad Company on account of their indebtedness to the State were issued; that he was not employed by or connected with any railway company at the time such payments were made; that he had never seen any of the warrants used by any railway companies in making the payments in question, and knows nothing of his own knowledge about the date of the warrants so paid in or the purpose for which they were issued.

The defendant next introduced in evidence a copy of the entry in a journal of the comptroller's department in August, 1883, certified to under the hand and official seal of the comptroller of public accounts, showing the payments to the school fund of the principal and interest on the bonds executed by the treasurer and the comptroller to the school fund for the amount of warrants used in making the payments involved in this suit, as follows, to wit:

284 333, Journal G.

COMPTROLLER'S OFFICE, AUSTIN, TEXAS, *Aug.* —, 1883.

Sunds.

71. To land sales, act July 14, 1879.

6.	Permanent school fund ac., am't transferred to school fund	
	Permanent school fund ac., to pay principal of bonds heretofore known as bonds of "doubtful validity," as provided for by act approv'd Feb. —, 1883, pages 15, 16, Gen'l Laws of 1883	320,367.13
4.	Available school fund ac., being amount transferred to that account to pay interest on above 320,367.13 to August 1, 1883, as per above act of Feb. 23, '83.	111,414.45
20.	Permanent university fund ac., amount transferred to that account under the provisions of the above act of Feb. 23, 1883, to pay the principal of bonds belonging to university fund, heretofore styled as of "doubtful validity," amount transferred under above act of Feb. 23, '83, to pay comptroller's certificate of debt....	200,867.94 10,300.41
22.	Available university fund ac., amount transferred to that account to pay the interest on the university bonds, as provided for in sec. 2 of the act of Feb. 23, 1883.....	45,104.22

COMPTROLLER'S OFFICE, AUSTIN, TEXAS.

I, R. W. Finley, comptroller of public accounts in and for the State of Texas, do hereby certify that the above is a true copy of the records of this department as stated therein.

In witness whereof I hereunto set my hand and seal of office this the 31st day of Jan., A. D. 1896.

(Signed) R. W. FINLEY,
[SEAL.] *Comptroller of Public Acc'ts.*

285 It is agreed by and between plaintiff and defendant that the above and foregoing is a true and correct statement of the facts given in evidence on the trial of said cause, and they now sign the same as such by their respective attorneys of record.

M. M. CRANE, *Att'y for Pl'ff.*
BAKER, BOTTS, BAKER & LOVETT,
Att'ys for Def't.

Examined and approved in open court this the 31st day of March, 1896.

F. G. MORRIS,
Dist. Judge, Presiding.

(Endorsed:) 11916. The State of Texas *v.* H. & T. C. R. R. Co. Statement of facts. Filed March 31, 1896. Jas. P. Hart, clerk.

Appeal Bond.

Filed March 17th, 1896.

In the Fifty-third Judicial District Court in and for Travis County, Texas.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

Whereas in the above numbered and entitled cause, pending in the fifty third judicial district court in and for Travis county,
286 Texas, and at a regular term of said court, to wit, on the 29th day of February, 1896, The State of Texas, plaintiff in said cause, recovered a judgment against The Houston & Texas Central Railroad Company, defendant in said cause, which said judgment is substantially as follows, to wit:

"FEBRUARY 29TH, 1896.

The above-styled cause coming on to be heard, both parties appeared, by their attorneys, and announced ready for trial, but no jury being demanded, all questions of fact, as well as of law, were submitted to the court.

Then came on to be heard the defendant's demurrer to plaintiff's supplemental petition, and after hearing the same the court considered that they ought all be overruled, which was accordingly done; to which ruling the defendant then and there excepted.

Then came on to be heard plaintiff's exceptions to the defendant's supplemental answer. The court is of the opinion that the law is against said demurrers, and they are accordingly overruled; to which ruling plaintiff excepted.

The court then, after hearing the evidence and argument of counsel, considered that all of the material allegations in plaintiff's original petition had been fully proven.

It is therefore ordered, adjudged, and decreed by the court that the plaintiff, The State of Texas, do have and recover of and from the Houston & Texas Central Railroad Company the sum of six hundred and seventy-three thousand one hundred nine and $\frac{56}{100}$ ($673,109.56) (the same being the amount of principal and interest now due), together with all costs of suit.

It being made to appear to the court that the said indebtedness was secured by a lien upon all of defendant's railroad property as described in said plaintiff's original petition, it is therefore ordered, adjudged, and decreed by the court that the said lien be, and the same is hereby, foreclosed on all of its line of railroad as de-
287 scribed in said petition—that is to say, on its line of railroad beginning at the original terminus of said road on the left bank of Buffalo bayou, in the city of Houston, in Harris county, Texas, and running thence in a general northwesterly direction through the counties of Harris, Waller, Grimes, Brazos, Robertson

Falls, and Limestone, to a point about three miles south of Kosse in Limestone county, including six sections of said road and also the road formerly known as the Washington County railroad now known as the Western branch of the Houston & Texas Central Railroad Company, as follows: Beginning at a point of junction of said Western branch with the track of the main line of the Houston & Texas Central railroad in the town of Hempstead, in Waller county, thence in a general westerly direction through Waller and Washington counties about twenty-one and ¼ miles to a point in Brenham, in Washington county; and upon all of the charter rights of said defendant company, including the road-bed, right of way, grading, bridges, iron, equipments, and masonry, and all stock subscribed for in said company or companies, and upon all depots and depot stations and all of the property owned by said company or companies as necessary for their business—that is to say, on all of the defendant's railroad property from its terminus at Houston, through the various counties of the State, to its northern terminus in Denison, Grayson county, Texas, and on its Western branch to its northwestern terminus at Austin, Travis county, Texas, including all of the road-bed, right of way, grades, bridges, iron rails, equipments, and masonry, and all depots and depot stations therein; and the clerk is hereby commanded to issue an order of sale directed to the sheriff or any constable or Travis county, Texas, commanding him to sell the above described property, or so much thereof as may be necessary for the satisfaction of the judgment rendered in this case, and to issue an order of sale directed to the sheriff or any constable of any other county in Texas upon application of plaintiff's counsel, directing
288 all the property hereinbefore described to be sold, or so much thereof as may be sufficient for the satisfaction of the judgment rendered in this case; and in the event said property does not sell for enough to satisfy same, then that an execution may be issued in favor of the plaintiff, The State of Texas, for the balance remaining unpaid.

It is further ordered that execution issue in favor of the officers of the court against the defendant for all costs herein incurred, for which they may have their execution.

To which judgment and to the judge's conclusion of law and fact the defendant excepted and in open court gave notice of appeal to the court of civil appeals."

From which judgment the said Houston & Texas Central Railroad Company has taken an appeal and desires to suspend the execution of said judgment during the pendency of said appeal:

Now, therefore, we, The Houston & Texas Central Railroad Company, as principal, and C. P. Huntington, Thos. H. Hubbard, Wm. D. Cleveland, Sam. Allen, and C. Lombardi, as sureties, acknowledge ourselves bound to pay to The State of Texas, plaintiff in said cause, the sum of one million five hundred thousand dollars ($1,500,000.00), conditioned that said Houston & Texas Central Railroad Company shall prosecute its appeal with effect, and in case the judgment of the supreme court or the court of civil appeals shall be against it, it shall perform its judgment, sentence,

or decree and pay all such damages as said court may award against it.

Witness our hands this 7th day of March, A. D. 1896.

HOUSTON & TEXAS CENTRAL RAILROAD COMPANY,
By BAKER, BOTTS, BAKER & LOVETT,
Its Attorneys.

C. P. HUNTINGTON.
THOS. H. HUBBARD.
WM. D. CLEVELAND.
SAM. ALLEN.
C. LOMBARDI.

289 THE STATE OF TEXAS, }
County of Harris. }

I, J. R. Waties, clerk of the district court in and for said county, do hereby certify that C. P. Huntington, Thos. H. Hubbard, Wm. D. Cleveland, Sam. Allen, and C. Lombardi, whose names appear signed to the annexed bond, are, in my opinion, good and ample security for the amount specified, and that if said bond was offered me for approval the same would be accepted and approved.

Witness my hand and seal of office at Houston, Texas, this 16th day of March, 1896.

[SEAL.]

J. R. WATIES,
C. D. C., Harris Co., Texas.

Approved March 17th, 1896.

JAS. P. HART,
Clerk of the District Court, Travis Co., Texas.

(Endorsed:) No. 11915. State of Texas *vs.* Houston & Texas Central Railroad Company. Appeal bond. Filed March 17th, 1896. Jas. P. Hart, clerk dist. ct. Travis Co., Texas.

Assignments of Error.

Filed May 7th, 1896.

In Travis County District Court, Fifty-third Judicial District.

THE STATE OF TEXAS
vs.
HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. } No. 11915.

290 Now comes The Houston and Texas Central Railroad Company, defendant in the above styled and numbered cause, and on its appeal to the court of civil appeals from the judgment herein rendered against it assigns the following errors committed by this court, to wit:

First.

The court erred in overruling and denying defendant's application to remove this cause into the circuit court of the United States

in and for the western district of Texas, as shown by defendant's bill of exceptions No. 1.

Second.

The court erred in overruling defendant's general demurrer to plaintiff's original petition herein.

Third.

The court erred in overruling defendant's II demurrer as contained in its first supplemental answer to the first special plea contained in plaintiff's first amended supplemental petition and to so much of said supplemental petition as alleged in effect that the treasury warrants therein referred to were void because issued in violation of the provision of the constitution of the State of Texas prohibiting the issuance of treasury warrants intended to circulate as money, and were bills of credit emitted by the State in contravention of the provisions of section X, article 1, of the Constitution of the United States, which demurrer was upon the ground that if said warrants were issued in violation of the constitution of Texas and of the United States, as alleged, it appeared from said supplemental petition that they were so issued by plaintiff and by it put in circulation among its citizens, and having been so issued and put in circulation, and after having contracted and agreed with defendant to receive the same as such payment, plaintiff, The State of Texas, accepted and received the treasury warrants so paid
291 in without protest or objection, and the transaction having been completed many years ago, and being fully executed, plaintiff, being the wrong-doer, if there was wrong, and *in pari delicto*, was not entitled to have the same reopened and set aside in order that it might take advantage of its own wrong, and was estopped to question or deny the validity of the transaction in this action instituted in its own behalf, and having received and accepted said warrants as such payment without protest or objection, it could not now repudiate its action.

Fourth.

The court erred in overruling defendant's III demurrer as contained in its first supplemental answer to the second special plea contained in plaintiff's first amended supplemental petition and to so much of said supplemental petition as alleged in effect that defendant should not be allowed credit for payments made in treasury warrants, and that such treasury warrants were illegal, because it was alleged that they were issued in aid of the rebellion, which demurrer was upon the ground substantially that if the warrants used in making the payments in question were issued in aid of the so-called rebellion, as alleged, it appeared from said supplemental petition that they were issued by plaintiff and by it put in circulation among its citizens, and having been so issued and put in circulation, and after having contracted and agreed with defendant to receive the same as such payment, plaintiff, The State of Texas,

accepted and received the treasury warrants so paid in without protest or objection, and the transaction having been completed many years ago, and being fully executed, plaintiff, being the wrong-doer, if there was wrong, and *in pari delicto*, was not entitled to have the same reopened and set aside in order that it might take advantage of its own wrong, and was estopped to question or deny the validity of the transaction in this action instituted in its own behalf, and having received and accepted said warrants as such payment without protest or objection, it could not now repudiate its action.

292 Fifth.

The court erred in overruling defendant's demurrer IV, as contained in its first supplemental answer to the last special plea, contained in said first amended supplemental petition, and to so much of said supplemental petition as alleges in effect that the said treasury warrants at the time such payments were made were practically worthless and without market value, and that such payments were repudiated by the officers of the State soon after the war; which demurrer was upon the ground substantially that the market or other value of such warrants was immaterial and irrelevant to any issue in the case; that the State could not legally complain of having paid the face value of its indebtedness, and that the time when it was alleged said payments were sought to be repudiated by the officers of the State was long after such payments had been made and the transaction completed and fully executed.

Sixth.

The court erred in excluding the testimony of defendant's witness, R. S. Lovett, offered to show the efforts made by defendant's counsel to ascertain the date, denomination, and character of warrants used in making the payments in question, as shown by defendant's bill of exceptions No. 2.

Seventh.

The court erred in admitting, over the objections of defendant, the testimony of plaintiff's witness, F. R. Lubbock, respecting the market value during the years 1863 and 1864 of treasury warrants issued by the State of Texas and the price for which witness sold the warrants issued to him, as shown by defendant's bill of exceptions No. 3.

Eighth.

The court erred in admitting, over the objections of defendant, the message of Governor E. J. Davis to the twelfth legislature, dated August 6th, 1870, vetoing the act for the relief of the Houston
293 & Texas Central Railway Company, as shown by defendant's bill of exception No. 4.

Ninth.

The court erred in admitting, over the objections of defendant, extracts from the message- of Governor Lubbock to the legislature dated November 15th, 1861, February 5th, 1863, and November 5th, 1863, and from the messages of Governor Murrah dated May 11th, 1864, and October 20th, 1864, relating to the financial condition of the State at those dates and to the existence, value, and use of treasury warrants; which were objected to by defendant upon the ground substantially (1) that the same were irrelevant, (2) that the purpose and intent of the legislature could not be thus shown, (3) that such evidence was inadmissible to show the meaning of such laws, (4) that said messages were not evidence of the facts therein stated, and (5) that it had not been shown that the warrants used in making the payments in question were of the same character as those referred to in said message-, all as shown by defendant's bills of exceptions Nos. 5, 6, 7, 9, and 10, presenting separately the same objections and question.

Tenth.

The court erred in admitting, over the objection of defendant, certificate of R. W. Finley, comptroller of public accounts of the State of Texas, setting forth copies of certain entries therein specified as contained in the books of his department, showing the charging of certain eight per cent. State bonds to the military board during the years 1862, 1863, and 1865, and other entries in reference to such bonds during said years, as shown by defendant's bill of exceptions No. 11.

Eleventh.

The court erred in admitting, over the objections of defendant, copy of a statement headed "The State of Texas school fund in account with C. H. Randolph, treasurer, for the two months ending the 31st day of December, 1864," certified to by R. W. Finley, comptroller of public accounts, and W. B. Wortham, treasurer of the State of Texas, as shown by defendant's bill of exceptions No. 12.

294 Twelfth.

The court erred in admitting, over the objections of defendant, copy of a statement headed "The State of Texas school fund in account with C. H. Randolph, treasurer, for the two months ending the 28th day of February, 1865," certified to by R. W. Finley, comptroller of public accounts, and W. B. Wortham, treasurer of the State of Texas, as shown by defendant's bill of exceptions No. 13.

Thirteenth.

The court erred in admitting, over the objections of defendant, a copy of a statement headed "The State of Texas school fund in account with C. H. Randolph, treasurer, for the quarter ending on the 31st day of May, 1865," certified to by R. W. Finley, comptroller of

public accounts, and W. B. Wortham, treasurer of the State of Texas, as shown by defendant's bill of exceptions No. 14.

Fourteenth.

The court erred in admitting, over the objections of defendant, copy of a statement headed "Statement of treasurer's receipts from revenue and other sources during the months of January and February, 1865," certified to by R. W. Finley, comptroller of public accounts, and W. B. Wortham, treasurer of the State of Texas, as shown by defendant's bill of exceptions No. 15.

Fifteenth.

The court erred in admitting, over the objections of defendant, copy of the statement headed "Statement of treasurer's receipts from revenue and other sources during the month of April, 1865," certified to by R. W. Finley, comptroller of public accounts, and W. B. Wortham, treasurer of the State of Texas, as shown by defendant's bill of exceptions No. 16.

Sixteenth.

295 The court erred in admitting, over the objections of defendant, an extract from the recommendations of C. R. Johns, former comptroller of the State of Texas, in his annual report as comptroller of public accounts, in November, 1861, as shown by defendant's bill of exceptions No. 17.

Seventeenth.

The court erred in admitting, over the objections of defendant, the treasury warrant attached as an exhibit to the depositions of E. W. Cave, in so far as same was offered as evidence to show the kind and character of warrants used in making the payments in question, as shown by defendant's bill of exceptions No. 18.

Eighteenth.

The court erred in admitting, over the objection of defendant, the treasury warrants taken from the basement of the comptroller's office and introduced in evidence in connection with the testimony of plaintiff's witness, W. C. McCall, as shown by defendant's bill of exceptions No. 19.

Nineteenth.

The court erred in admitting, over the objection of defendant, the treasury warrants taken from the basement of the comptroller's office and introduced in evidence in connection with the testimony of plaintiff's witness, G. A. Proctor, as shown by defendant's bill of exceptions No. 20.

Twentieth.

The court erred in excluding, upon the objection of plaintiff, cross-interrogatory No. 2 propounded to and the answer thereto by E. W.

Cave, whose depositions were taken by plaintiff, as shown by defendant's bill of exceptions No. 21.

Twenty-first.

The court erred in its finding and conclusion that all the allegations of fact contained in plaintiff's original petition are true as
296 therein stated, for there was not due and unpaid on the bonds of the Houston & Texas Central Railway Co. described in said petition on the first day of May, 1870, principal and interest, the sum of $657,324.35, as alleged in said petition, but only the sum of $551,550.00 was so due and unpaid on said date, and in finding that on said bonds of the Washington County Railroad Company there was on May 1st, 1870, $103,840.01, when only $48,497.17 was so due, being the balances after allowing defendant the credit for the amounts theretofore paid by said companies, as pleaded in its first amended answer, including the amounts paid in treasury warrants, and there was not due plaintiff at the time of the filing of said petition the several amounts therein alleged to be then so due, because all of said indebtedness had been theretofore fully paid off and discharged.

Twenty-second.

The court erred in finding and concluding as a fact that neither the State nor the railroad companies discriminated as to the class of warrants received by said companies for carrying services or used in making the payments in question, and that some of all kinds were used in making the payments, because there is no evidence to support such finding and conclusion, and no evidence that said railroad received or used in making such payments other than legal and valid warrants.

Twenty-third.

The court erred in finding as a fact that the payments made in treasury warrants on the indebtedness in question were charged off the account, and the account of the State *that* defendant was restated May 1st, 1870, so as to ignore the said payments in treasury warrants, because there is no evidence whatever to sustain or support such finding, but the uncontradicted evidence shows that said account and said indebtedness, as it stood on the
297 books of the State on May 1st, 1870, recognized and allowed defendant full credit for said payments in treasury warrants, and that if the same were ever charged off by the State or the accounts restated so as to ignore the same, it was subsequent to May 1st, 1870.

Twenty-fourth.

The court erred in finding that it was not proved that the governor was threatening to sell defendant's railroad to force the repayment of the amounts paid in treasury warrants, or whether he would have resorted to a suit to enforce such payments, because it

was not disputed and the evidence abundantly established the fact.

Twenty-fifth.

The court erred in finding and holding that by the act approved January 11th, 1862, the time for paying the interest and sinking fund maturing on the loans declared on in plaintiff's petition was extended until six months after the close of the war, and that for that reason the payments in question made in treasury warrants were made before the same were due and when no payment on account of said indebtedness was required to be made, because said act of January 11th, 1862, only extended the time for making such payments until the first day of January, 1864, or until six months after the termination of the war, if it should terminate before said date.

Twenty-sixth.

The court erred in finding and concluding that the acts of the legislature of the State of Texas authorizing the payments in question to be made in treasury warrants were passed in aid of the rebellion, and were for that reason void, because there was no evidence whatever to support and the evidence is insufficient to sustain the finding that the acts or either of them were passed in aid of the rebellion, and there was nothing upon the face of said acts indicating that they were passed for any such purpose.

298 Twenty-seventh.

The court erred in finding and concluding that the acts of the legislature of the State of Texas authorizing the payments in question in treasury warrants were passed in aid of legislation intended to cause State treasury warrants to be issued to circulate as money and with a view of stimulating their circulation as money, and were for that reason void, because there was no evidence whatever to support and the evidence is insufficient to sustain such finding, and there was nothing upon the face of said acts indicating that they were passed for any such purpose.

Twenty-eighth.

The court erred in finding and concluding that the companies under which defendant claims, by receiving treasury warrants of the State of Texas at par in order to be entitled to use them in making the payments in question, were aiding the rebellion, and were also, in so doing, supporting the circulation of treasury warrants issued to circulate as money in violation of the constitution of the State and of the United States, and that for such reason defendant acquired no right thereby to use treasury warrants in making such payments, and that the State officers had no authority to accept such payments, and that they were void, because there is no evidence to support and the evidence fails to sustain such findings.

Twenty-ninth.

The court erred in concluding and holding, as matter of law, that no presumption could arise or exist that the officers of the State of Texas accepting the payments in question, made in treasury warrants, accepted only such warrants as were issued in aid of the civil government.

Thirtieth.

299 The court erred in concluding and holding, as matter of law, that the burden of the proof was upon defendant to plead and prove the particular kind and character of warrants used in making the payments in question, or that defendant was required to do more than plead and prove the payment in such treasury warrants as were acceptable to and were, in fact, accepted by the comptroller of the State of Texas, who was by law authorized to receive the same as such payments.

Thirty-first.

The court erred in concluding and holding, as matter of law, that the burden of proof was on defendant to show that the treasury warrants used in making such payments were legal and valid, or to show more than the fact that the warrants used in making such payments were accepted by the officers authorized to receive the same.

Thirty-second.

The court erred in finding and concluding that the legislature of the State of Texas and all officers of said State were acting outside of their authority to represent the State, and that they alone, and not the State of Texas, were *in pari delicto* in authorizing and receiving such payments and in subsequently ratifying the same.

Thirty-third.

The court erred in holding that the payments in question did not constitute an executed matter upon the ground that nothing was executed or accomplished by said payments, but that they were void and did not amount to payments in law, and that they were not received by the State as payments, but were received by the State's officers, because there is no evidence to support and the evidence is insufficient to sustain such finding, and the same is erroneous.

Thirty-fourth.

300 The court erred, as matter of law, in holding that the legislature of the State of Texas had no power in 1870 to validate the said payments and did not validate them.

Thirty-fifth.

The court erred in rendering judgment against defendant for the sum of $673,109.56, as principal and interest to the date of the

judgment, which is more than the amount claimed in plaintiff's petition, and when, according to plaintiff's pleadings and the undisputed evidence, plaintiff, if entitled to recover at all, was in no event entitled to recover more than $645,467.27.

Thirty-sixth.

The court erred in rendering judgment against this defendant for the amount found by the court to be due plaintiff on account of the loans declared on in plaintiff's petition because it is not alleged in plaintiff's petition, nor is it shown by any evidence, that this defendant ever assumed or promised to pay or in any manner became liable and bound for said indebtedness, or for any part thereof, and said judgment is therefore without any pleadings or evidence to support it.

Thirty-seventh.

The court erred in rendering judgment establishing and foreclosing a lien upon all defendant's line of railway extending from the city of Houston, Harris county, to the town of Denison, Grayson county, with a branch line extending from Hempstead, Waller county, to Austin, Travis county, and upon its corporate rights and franchises and upon all of its other property to satisfy the amount decreed by the court to be due the plaintiff, when plaintiff's petition does not claim any lien, and no lien in fact or law exists or ever existed upon any of said property, except that part of defendant's line of railroad extending from the left bank of Buffalo
301 bayou, in the said city of Houston, in a northwesterly direction through the counties of Harris, Waller, Grimes, Brazos, Robertson, Falls, and Limestone, to a point about three miles south of Kosse, in Limestone county, a distance of about 150 miles, and on that part of the Austin branch of defendant's railway extending from the junction thereof with defendant's main track in the town of Hempstead in a westerly direction through Waller and Washington counties, a distance of about 21¼ miles, to a point in the town of Brenham, in said Washington county.

Thirty-eighth.

The court erred in rendering judgment against defendant at all without first or at the same time rendering judgment against the Houston & Texas Central Railway Company and the Washington County Railroad Company, who contracted the indebtedness declared on and by whom alone, if by any one, it was due, and when no evidence was offered to show that the said Houston & Texas Central Railway Company was defunct, or that its corporate existence had ceased or that it had no directors who became and are trustees for its creditors and stockholders upon the sale of its corporate rights, franchises, and property.

Thirty-ninth.

The court erred in finding and holding as matter of law that the entire amount of the indebtedness claimed by plaintiff against defendant, and which the court found to exist, was due on the ground that defendant had been in default for more than ten days in making payments of interest and sinking fund thereon, whereas, if said indebtedness exists and defendant is in default thereon, it appears that such default is due to the *bona fide* and reasonable belief and contention upon defendant's part that it had paid off and satisfied said indebtedness in full by the payments in question.

302 Fortieth.

The court erred in denying defendant credit for and holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant on the ground that the laws authorizing such payments to be made in treasury warrants were passed in aid of the rebellion and for that reason were void, when there was no evidence to support or sufficient to sustain such finding, and when there was nothing upon the face of said laws to indicate that they were passed for any such purpose or were for any reason invalid.

Forty-first.

The court erred in denying defendant credit for and holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant on the ground that such treasury warrants were issued in aid of the rebellion, and were for that reason illegal, when there was no evidence whatever to show that the warrants or any of them used in making such payments were other than legal and valid warrants issued before or during the war in the usual course of business on appropriations duly made for the support of the civil government of the State or for other lawful purposes, and when there was no evidence whatever to support or sustain said judgment.

Forty-second.

The court erred in denying defendant credit for and holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant on the ground that the laws authorizing such payments to be made in treasury warrants
303 were passed in aid of legislation intended to cause State treasury warrants to be issued to circulate as money, contrary to the constitution of the State, and as bills of credit, contrary to the Constitution of the United States, and for those reasons were void, when there was no evidence whatever to support or sufficient to sustain such findings and when there was nothing upon the face of

said laws to indicate that they were passed for any such purpose or were for any reason invalid.

Forty-third.

The court erred in denying defendant credit for and holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant on the ground that such treasury warrants were issued with the intention that they should circulate as money, contrary to the constitution of the State, and as bills of credit, contrary to the Constitution of the United States, and were for those reasons illegal, when there was no evidence to support or sustain such finding and judgment or to show that any of the warrants were other than legal and valid warrants drawn by the comptroller in the usual course of business upon the treasurer of the State to pay appropriations theretofore duly made by the legislature of the State for the support of the State government, by which means alone money could be lawfully drawn from the treasury of the State.

Forty-fourth.

The court erred in rendering judgment against defendant when the undisputed evidence showed that the indebtedness declared on in plaintiff's petition had been fully paid off and satisfied upon the ground that the payments thereon shown to have been made in State treasury warrants were invalid, or that defendant was not entitled to credit therefor, when it appeared from the undisputed evi-
dence that if the treasury warrants used in making such
304 payments were issued in aid of the rebellion or were issued to
circulate as money, contrary to the constitution of the State, or were bills of credit emitted contrary to the Constitution of the United States, they were so issued by the State of Texas and were by it accepted without protest or objection and willingly as valid and lawful payments, and the transaction was fully executed, and that the State of Texas was *in pari delicto* if there was wrong in the transaction.

Forty-fifth.

The court erred in finding and holding that defendant was not entitled to credit for the amount shown to have been paid on account of the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant, when at the time such payments were made there were valid laws of the State of Texas in force authorizing such payments to be made in such treasury warrants on the condition, in effect, that the comptroller should be satisfied that the company making such payments had accepted such warrants at par with specie for freight and passenger fares upon its railroad, and when the undisputed evidence showed that the comptroller, being so satisfied, had accepted said warrants as such payments, and at the time gave due credit therefor, when there was no evidence whatever to show that the warrants

so used in making such payments were illegal or invalid or other than legal and valid warrants issued before or during the war in the usual course of business on appropriations duly made for the support of the civil government of the State, or for other lawful purposes, and when there was no evidence whatever of any illegality in the transaction with respect to the kind and character of warrants used or the action of the company in making such payments or otherwise, and when said payments were received and accepted without protest or objection at the time and were acknowledged to be and treated as valid by the government of the State of Texas at that time and frequently afterward, and when the transaction was and had been for a great number of years
305 fully executed and completed, and when it appeared that if said warrants were illegal or if there was any illegality whatever in the transaction plaintiff was the wrong-doer and was *in pari delicto* and was not entitled to relief against the same.

Forty-sixth.

The court erred in rendering judgment against defendant when the uncontradicted evidence showed that the indebtedness declared on in plaintiff's petition had been fully paid and satisfied and ceased to exist upon the ground that the payments on said indebtedness, made in treasury warrants, as shown by the evidence, were invalid, or that defendant was not entitled to credit therefor, when it appeared that at the time such payments were made there were valid laws of the State of Texas in force authorizing such payments in such warrants upon the conditions specified in such laws, which conditions the undisputed evidence showed were fully complied with.

Wherefore defendant prays that such judgment be reversed and rendered in defendant's favor.

J. P. BLAIR,
BAKER, BOTTS, BAKER & LOVETT,
Attorneys for H. & T. C. R. R. Co., Defendant.

(Endorsed:) No. 11915. The State of Texas *vs.* H. & T. C. R. R. Co. Assignments of error. Filed May 7th, 1896. Jas. P. Hart, clerk.

306 *Bill of Costs.*

THE STATE OF TEXAS
vs.
THE H. & T. C. R. R. Co. } No. 11915.

To officers of court, Dr.

Clerk's Fees.

	Dolls.	Cts
Docketing suit		20
Issuing citations and duplicates	3	00
" copy petition and certificate	4	20
Entering appearance		30
" continuance		60
" motions		60
" orders and decree	3	00
Issuing 3 subpœnas		75
" 4 additional names		60
Swearing 7 witnesses		70
Issuing copy int. and notice	2	70
" " " " commission	3	35
Taking bond	1	50
Filing 70 papers	10	50
Entering judgment	2	25
Assessing damages		50
Taxing cost		25
Transcript	224	25
Clerk's costs forward	$259	25

307 *Sheriff's Fees.*

	Dolls.	Cts.
R. E. White, citation & mileage	1	75
Sheriff of Harris Co., citation	1	60
R. E. White, subpœnas and mileage	3	60
Sheriff of Harris county, precept	1	00
Total sheriff's costs	$7	95

Miscellaneous Costs.

Depositions of E. W. Cave, taken by pl'ff	15	00

Recapitulation.

Miscellaneous costs	15	00
Clerk's costs	259	25
Sheriff's costs	7	95
Total	$282	20

308 *Clerk's Certificate.*

THE STATE OF TEXAS, }
County of Travis. }

I, Jas. P. Hart, clerk of the district court within and for the county and State aforesaid, do hereby certify that the within and foregoing 342 pages *is* a true and correct transcript of all the proceedings had in this court in cause No. 11915, of The State of Texas *vs.* The Houston & Texas Central Railroad Company, as the same appear now of record and on file in this office.

Given under my hand and seal of office, at office, in the city of Austin, Texas, this the 16 day of May, A. D. 1896.

[SEAL.] (Signed) JAS. P. HART,
Clerk District Court, Travis County, Texas.

(Endorsed:) No. 1714. The Houston & Texas Central Railroad Co., appellant, *vs.* The State of Texas, appellee. From the district court of Travis county, 53rd judicial district. Applied for by Baker, Botts, Baker & Lovett, attorneys for appellant, on the 16th day of May, A. D. 1896, and delivered to the above-named attorneys on the 16th day of May, A. D. 1896. Jas. P. Hart, clerk of the district court of Travis county. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, June 10, 1896. Will L. Vining, clerk.

309 *Order of Court of Civil Appeals.*

Made Febr'y 17th, 1897.

H. & T. C. R. R. Co. }
vs. } No. 1714.
STATE OF TEXAS. }

Appeal from Travis county.

Submitted upon briefs and oral arguments of both parties.

Opinion of the Court of Civil Appeals.

Filed June 9th, 1897.

THE HOUSTON & TEXAS CENTRAL RAILROAD COMPANY, }
Appellant, } No. 1714.
vs. }
THE STATE OF TEXAS, Appellee. }

Appeal from Travis county.

Statement of Case.

This suit was instituted by the State of Texas through its then attorney general, C. A. Culberson, in the district court of Travis county, on the 5th day December, 1894, praying judgment for balance

claimed to be due on part of the special school fund of the State of Texas. The petition states the case about as briefly as the points involved will justify. It is therefore substantially incorporated herein, omitting the formal parts.

" Plaintiff, The State of Texas, through her attorney general, C. A. Culberson, acting under direction of the governor, brings this suit against the Houston & Texas Central Railroad Company, and says:

1st. The said company is incorporated under the general laws of the State of Texas.

2nd. Its general office and principal place of business is at Houston, Texas.

310 3rd. Its line of railroad runs into and through the county of Travis, in the State of Texas.

4th. Its local agent at Austin, in said county, is H. D. Patrick.

5th. The State of Texas made loans, under the provisions of an act entitled 'An act to provide for the investment of the special school fund in the bonds of railroads incorporated by the State,' approved August 12th, 1856, to the Houston and Texas Central Railway Company as follows:

On April 18, 1857, one hundred and fifty thousand dollars;
On October 28, 1857, sixty thousand dollars;
On May 21, 1858, sixty thousand dollars;
On July 6th, 1858, thirty thousand dollars;
On February 23, 1859, thirty thousand dollars;
On June 15, 1859, thirty thousand dollars;
On July 22nd, 1859, thirty thousand dollars;
On August 2nd, 1859, thirty thousand dollars;
On August 20, 1859, thirty thousand dollars; and said company executed — delivered to the State of Texas, in consideration of said loans, bonds as follows:

One dated March 25, 1857, for one hundred and fifty thousand dollars;
One dated September 22, 1857, for sixty thousand dollars;
One dated January 28, 1858, for thirty thousand dollars;
One dated February 23, 1858, for thirty thousand dollars;
One dated February 23, 1858, for thirty thousand dollars;
One dated January 25, 1859, for thirty thousand dollars;
One dated May 14, 1859, for thirty thousand dollars;
One dated —— —, 1859, for thirty thousand dollars;
One dated June 2, 1859, for thirty thousand dollars;
One dated July 29, 1859, for thirty thousand dollars; said

311 bonds being to the effect that said company would pay to the State of Texas, at the office of its treasurer, in the city of Austin, ten years from the respective dates of said bonds, the said several sums of money; would pay each year two per cent. of said several sums as sinking fund, and would pay interest on each of them at the rate of six per cent. per annum, and said bonds expressly acknowledging the lien created by the act aforesaid to secure payment of loans made thereon.

By the loans aforesaid and by the execution of said bonds the said company became liable to pay, at the dates severally indi-

cated, the several sums of money (principal, interest, and sinking fund) mentioned, and the State, to secure payment of said sums, became thereby invested with the lien aforesaid.

6th. The State of Texas made under the provisions of the act aforesaid and of an act approved January 28th, 1856, a loan to the Washington County Railroad Company on June 29th, 1859, of sixty-six thousand dollars, and in consideration thereof the said company executed to the State its bond dated June 6th, 1859, to the effect that it would, ten years after the date thereof, pay to the State, at Austin, Texas, said sum, would pay annually two per cent. thereof as a sinking fund, and would pay interest thereon at the rate of six per cent. per annum, and acknowledging the lien created by the act aforesaid.

By the said loan and the bond aforesaid the said company promised and became liable to pay the same sum at the time indicated and the said sinking fund and interest, and the State became invested with the lien aforesaid.

7th. That on or before the 15th day of August, A. D. 1870, the Washington County railway became consolidated with and merged into the Houston & Texas Central railway, and said Houston & Texas Central Railway Company thereafter had possession of and claimed the property which had theretofore belonged to the Washington County Railway Company.

312 8th. That the bonds aforesaid were not paid according to their tenor and effect, and the property upon which the lien aforesaid attached became liable to sale.

9th. That prior to the 15th day of August, 1870, the Houston & Texas Central Railway Company had constructed on its main line railroad as follows: A line of railroad completely constructed, beginning at the original terminus of said road on the left bank of Buffalo bayou, in the city of Houston, in Harris county, Texas, and running thence, in a general northwesterly direction, through the counties of Harris, Waller, Grimes, Brazos, Robertson, Falls, and Limestone, including the 1st, 2nd, 3rd, 4th, 5th, and 6th sections of twenty-five miles each, to a point one hundred and fifty miles *to* the place of beginning, about three miles south of Kosse, in Limestone county.

10th. That prior to the 15th day of August, 1870, the Washington County Railway Company and the Houston & Texas Central Railway Company had constructed of what is now known — the Western branch of the Houston & Texas Central railroad as follows: A line of railroad beginning at the point of junction of said Western branch with the track of the main line of the Houston & Texas Central railroad in the town of Hempstead, in Waller county, thence in a general westerly direction through Waller and Washington counties for about twenty-one and a quarter miles to a point in the town of Brenham, in Washington county.

11th. That under the terms of the said act of August 13th, 1856, and under the terms of the bonds aforesaid a lien to secure payment of the said bonds attached to all of said road, viz., said one hundred and fifty miles of the main line of the Houston & Texas Central

railway and twenty-one and a quarter miles of the Western branch thereof, and to all charter rights of said company or companies, including the road-bed, right of way, grading, bridges, iron rails,
313 equipments and masonry, and to all stock subscribed for in said company or companies, and upon all depots and depot stations, all the property owned by said company or companiss as necessary for their business.

12th. That on the 1st day of May, 1870, the aggregate amount due upon the bonds executed by the Houston & Texas Central Railway Company, principal and interest, was the sum of six hundred and fifty-seven thousand three hundred and twenty-four and $\frac{35}{100}$ths dollars ($657,324.35).

13th. That on the 1st day of May, 1870, the aggregate amount due upon the bonds executed by the Washington County Railway Company, principal and interest, was the sum of one hundred and three thousand eight hundred and forty and $\frac{1}{100}$th dollars ($103,840.01).

14th. That the Houston & Texas Central Railway Company accepted the terms of the said act of August 13th, 1870, entitled 'An act for the relief of railroad companies indebted to the State for loans from the school fund,' and thereby promised and became liable to pay, in addition to said sum of $657,324.35 and said sum of $103,840.01, semi-annually, on the 1st day of November and the 1st day of May of each year, six months' interest at six per cent. per annum on said aggregate amounts, and in addition thereto on said dates a sinking fund of one per cent. of said amounts, in consideration of which promises the State by the terms of said law agreed not to make sale of the property upon which its lien existed as long as said payments were made.

15th. That thereafter to May 1st, 1879, said semi-annual interest and sinking fund was paid by the Houston & Texas Central Railway Company upon said sum of $103,840.01, but that no payment of principal or interest was made on November 1st, 1879, nor within ten days thereafter, nor has any such payment been since made, and upon said failure to pay within ten days after the 1st day of November, A. D. 1879, the entire balance then remaining unpaid of said sum, amounting to $86,655.90, became at once due and payable.
314 16th. That up to and including the 1st day of May, 1893, the said semi-annual interest and one per cent. sinking fund was paid by said Houston & Texas Central Railway Company and defendant upon said sum of $657,324.35, but the next semi-annual interest and sinking fund was not paid, but the sum of $2,620 only was paid. The balance thereof was not paid nor has it or any part of it since been paid, and upon said failure to pay within ten days after the 1st day of November, A. D. 1893, the entire balance of $411,935.84 remaining then unpaid of said sum of $657,324.35 became at once due and payable.

17th. That upon said sum of $86,655.90 there has become due each six months from said 1st day of May, 1879, up to the present time semi-annual interest at the rate of six per cent. per annum, and there is due upon each of said installments of unpaid interest

interest from the date upon which they respectively became due at the rate up to July 1st, 1891, of eight per cent., and since then o six per cent.

18th. That upon said sum of $411,935.84 there has become due upon May 1st, 1894, semi-annual interest at the rate of six per cent per annum, and upon November 1, 1894, a like amount, and since those dates upon said unpaid installments of interest at six per cent.

19th. That upon the 1st day of July, A. D. 1886, all the property of the Houston & Texas Central Railway Company, including the property upon which the State has the lien aforesaid, was sold judicially, and the purchaser and his associates formed under the laws of this State the corporation herein styled defendant.

20th. That said Washington County and Houston & Texas Central Railway Companies are defunct; that their corporate existence has been terminated; that neither of them has a president, directors or other officers or stockholders or other representatives upon whom service may be had, and that there is no way of bringing said defunct corporations before this court.

315 21st. That the Houston & Texas Central Railroad Company, defendant, claimes as the legal owner (subject to the lien heretofore mentioned) and as in possession of all the property upon which the lien above set forth exists.

22nd. Plaintiff prays that judgment be given it that there is due upon the obligations aforesaid the sums of money heretofore stated with interest as set forth, and that payment thereof is secured by the liens on the property aforesaid; that said property be sold as under execution, and that the proceeds be applied to the payment of said sums, with interest, and for costs, and that it have other relief, including the appointment of a receiver, as in the premises should be given."

To this defendant answered on the 6th day of February, 1895 and on May 15th, 1895, filed its first amended original answer setting up the payment of certain amounts during the war between the States in State treasury warrants, in addition to certain large cash payments therein pleaded.

Among the payments pleaded were certain amounts paid during the year 1864 by the Houston & Texas Central Railway Company and during the year 1864 and on May 11, 1865, by the Washington County Railroad Company, in the treasury warrants of the State of Texas, as authorized by the act entitled "An act authorizing the comptroller of the State to receive from railroad companies in this State the interest that may now be due on their bonds," approved December 16, 1863 (General Laws 10th Legislature, page 37), and the act entitled "An act amending an act authorizing the comptroller of the State to receive from railroad companies in this State the interest that may now be due or hereafter become due on their bonds," approved May 28th, 1864 (General Laws 10th Legislature, Called Session, page 9), and the act entitled "An act to authorize railroad companies to discharge

their indebtedness to the special school fund with the treasury
316 warrants and bonds and coupons of the State," approved November 16, 1864 (General Laws 1864, Second Extra Session, page 43). Compliance with the conditions of these acts, necessary to entitle said companies to make such payments in warrants, was alleged in the answer, and it was claimed that by accepting said warrants at par with specie for freight and passenger fares, as required in said acts, the same had become a contract between the State and said company, and the latter had thereby acquired a vested right to the credits for such payments. It was also claimed by the appellant in said answer that said payments were made in good faith, at the instance and invitation of the State, and accepted by the State, through its duly authorized officers, without objection, as valid and lawful payments, and proper credit therefor was then and there given said railway companies by the proper officers upon the books of the State; that the validity of said payments and the right of said railway companies to credit therefor was recognized by all the State's officers at the time and for many years thereafter, and was disputed by no one, and was expressly recognized by the act entitled "An act for the relief of railroad companies indebted to the State for loans from the special school fund," approved August 13, 1870 (General Laws 1870, page 85), and by the act entitled "An act for the relief of the Houston & Texas Central Railway Company," passed August 15th, 1870 (Special Laws 1870, page 325), and acquiesced in by all the executive officers and by all departments of the State government until the latter part of the year 1870, when A. Bledsoe, then comptroller, with the concurrence and approval of E. J. Davis, then governor of Texas, wrongfully and unlawfully sought to deprive the said railway companies of the credit to which they were entitled on account of said payments and wrongfully sought to repudiate the same, and to that end, without authority of law, sought to recharge each of said railway companies upon the books of the comptroller's office with
the amounts which had been so paid by them in treasury war-
317 rants. It was alleged that after such action of said comptroller and in pursuance of their scheme the said E. J. Davis, as governor, threatened to proceed and was in fact proceeding to advertise and sell the railroad and property of each of said railway companies in the manner provided in the aforesaid acts of August 13, 1856, and of August 13, 1870, and avowed his purpose to sell the same unless each of said railway companies pay the amount claimed by said governor and comptroller to be due as interest and sinking fund on said indebtedness, disregarding and without allowing credit for the payments made in treasury warrants, and that, in order to avoid the sale of their railroad and property and the irreparable injury that would have resulted to each of them therefrom, the said railway companies were forced to pay said interest and sinking fund accordingly, which they did under protest, filing a written protest with the comptroller before and with each payment. It was alleged that like threats were thereafter made and duress and coercion exercised at the maturity of each installment of interest and sinking fund, as provided in the act of August 13, 1870, and such payments were

made in each instance under protest in writing and filed with the comptroller, as aforesaid. After continuing said payments until all of the indebtedness, allowing credit for the payments made in treasury warrants, had been paid off and discharged, said railway companies and appellant discontinued the same and refused thereafter to make further payments. The last payment on account of the indebtedness of the Washington County Railroad Company was made on May 1st, 1879, and on account of the indebtedness of the Houston & Texas Central Railway Company on May 1st, 1893, upon which dates it was claimed the indebtedness of said railway companies, respectively allowing credit for the payments made in warrants, was fully paid off and discharged.

On November 16th, 1895, appellee filed its first supplemental petition. This was subsequently amended on the 16th day of
318 January, 1896. The amended supplemental petition consisted of demurrers and appeal plea, setting up:

1. That the money borrowed by the railroad company constituted a part of the special school fund of the State of Texas which had been previously appropriated as a permanent fund for the support of the public free schools, and that to permit these payments in worthless warrants or in anything else than money would be a diversion of that school fund, and was therefore in contravention of sec. 2, art. X, of the constitution of 1845 and as amended in 1861.

2. That the treasury warrants so issued were issued for the purpose of being circulated as money, and that they were so circulated and used by the State officers; that they were therefore void because in contravention of sec. 8. art. VII, of the constitution of the State of Texas then in existence.

3. Because the said warrants so issued constituted bills of credit, within the meaning of section 10, article I, of the Constitution of the United States, and they were therefore void because said section of the Constitution prohibited their issuance by the States.

4. Because the acts of the legislature authorizing the issuance of said treasury warrants and the history of the times show that they were issued for the purpose of aiding the then authorities of the State of Texas in prosecuting a war and rebellion against the Government of the United States, and that they were issued for the purpose of aiding the State in prosecuting said war and rebellion.

5. Because the people in the constitutional convention assembled in 1866 by ordinance declared all warrants in which said pretended payments were made to be utterly void and of no effect, and, further, because article XII, section 36, of the constitution of 1869 reiterated and repeated the same declaration.

6. That said warrants in which said payments were made were utterly worthless.

319 7. That said payments had been disallowed in 1870 by the then officers of the State, of which defendant had ample notice.

Plaintiff prayed that no credit be allowed by reason of the payments in said warrants, and if allowed that they be allowed only to

the extent of the market value of said warrants when paid to the State.

In response to this additional pleading of the plaintiff, defendant filed its first supplemental answer excepting to plaintiff's pleadings in response to defendant's original answer upon various grounds which will be stated and noticed in detail under the assignments of error hereinafter presented and discussed, complaining of the action of the court in overruling such exceptions, and defendant also by said supplemental answer joined issue on all the allegations of the plaintiff's supplemental petition, and by way of special pleas denied that the treasury warrants used in making such payments were issued for the purpose of being circulated as money or in aid of the rebellion, but averred that they were issued in the exercise of the powers and performance of the duties conferred upon the comptroller by laws in force in the State of Texas ever since its annexation and in the ordinary transactions of the business of the government, and to pay appropriations duly made by the legislature for the ordinary and lawful expenses of the government, including salaries of legislative, judicial, and executive officers, but then in excess of the revenues for the time being of the State government and above the available funds in the State treasury; but defendant averred, however, that if it were true, as alleged by the plaintiff, that said warrants were issued in violation of the constitution of this State prohibiting the issuance of treasury warrants intended to circulate as money, or were bills of credit emitted by the State in violation of the Constitution of the United States, or were issued in aid of the rebellion, they were so issued by plaintiff, The State of Texas, and put in circulation by it among its citizens, who were induced,
320 if not coerced, by the State to accept the same; that after agreeing with said railway companies by the aforesaid acts of December 16, 1863, May 28, 1864, and November 16, 1864, to receive said warrants, under the terms and conditions in said acts specified, in payment of interest and sinking fund due on said indebtedness, the State did receive and accept said payments in treasury warrants without objection or protest and applied the same as payments upon the indebtedness sued on, giving due credit therefor at the time upon its books; that at the time of the passage of such acts and upon the date of such payments the State of Texas was in the full exercise and enjoyment of all its governmental powers, its laws were enforced throughout its territorial limits, and all persons therein were subject thereto, and that such payments were, when made, valid and binding and in accordance with the valid laws of the State then in force and uniformly observed and enforced throughout the limits of the State, and that any subsequent legislation or constitutional provision intended to invalidate such payments was contrary to the Constitution of the United States and therefore void. It was further averred, in effect, that the said warrants having been issued by the State and put in circulation by it, and said railway companies having been induced to accept the same as payment for freight and passenger fares, as provided in the

aforesaid acts, and the State of Texas having invited them to make such payments in warrants and having accepted said warrants at the time without protest or objection and having given due credit therefor, and the transaction having been completed and being fully executed, the State, being the wrong-doer if there was wrong, was not entitled to have said completed and executed transactions reopened and set aside and relief given it against its own wrong, and that if it be true, as alleged by the State, that said warrants were issued in aid of the rebellion or were issued with the intention that they should be circulated as money, or that they were bills of credit emitted by the State, then the State was *in pari delicto*
321 and was not entitled to reopen said executed transaction and set the same aside and secure relief against its own wrong.

On the 16th of November, 1895, defendant filed his application, accompanied by bond, for the removal of the cause in the circuit court of the United States for the western district of Texas, alleging in substance that the cause of action was one arising under the Constitution and laws of the United States. The application was denied.

All of the demurrers were overruled by the court, the case was tried, and resulted in a judgment for the plaintiff for the sum of $673,109.56, together with all costs of suit, and with a foreclosure of the lien mentioned in the petition upon all the property of the defendant.

Opinion.

We find that the bonds sued upon by the State were executed by the Houston & Texas Central railway and the Washington County railway, as alleged, and that the Central railway acquired all of the rights and property of the Washington County railway and took the property of that road subject to the liens asserted by the State. We find that the defendant made the payments pleaded in its answer, but that such payments as were made in State warrants were in treasury warrants intended by certain acts of the legislature of the State to circulate as money. We find that prior to August 13th, 1870, the Houston & Texas Central Railway Company's line of road extended from the left bank of Buffalo bayou, in the city of Houston, Texas, one hundred and fifty miles in a northwesterly direction through the counties of Harris, Waller, Grimes, Brazos, Robertson, Falls, and Limestone, and that the Washington County railway extended twenty-one and a quarter miles from the town of Hempstead, in Waller county, to Brenham, in Washington county, and we also find that the amount due the State is the amount for which the judgment was rendered. In view of the disposition we make of the
322 case, these are all the facts we feel called upon to find. The first question that arises is whether the court erred in refusing to remove the cause to the Federal court, as requested by appellant. In view of the construction given to the law regulating the removal of causes from the State court to the Federal court by the case of Tennessee *vs.* Union & Planters' Bank, 152 U. S., 455, we must hold that the trial court did not err in denying the application to remove. The ground of removal insisted upon is that a Federal

question arises from the pleadings filed by the State. The original petition filed by the State was an ordinary action at law upon the bonds executed by the railway companies under statutes of this State which fixed and determined the liability of the obligers. No part of the Federal Constitution or any law of Congress were proper or necessary to be passed upon in order to grant the State the relief asked in the original petition. The remedy pursued by the State and the relief she asked were fully and adequately provided for by the statutes of this State. The obligations executed by the railway company upon which the suit was brought were to be construed by the rules of the common law and the statutes relating thereto. There are no provisions of the Federal Constitution or of the laws of Congress that had any bearing upon the liability of the appellant upon the bonds as originally sued upon. The defendant in its answer set up defensive matter in the nature of payment of the obligations executed by it; and the State, in response thereto, in its supplemental petition stated several reasons as showing that the alleged payments were void and illegal and were not binding upon the State, among which was one to the effect that such payments were made in State treasury warrants which were in the nature of bills of credit, and which the State by the terms of the Constitution of the United States was denied the authority to issue. The State was not in any of its pleadings seeking to set aside or cancel the payments made, but its contention was that no payments had
323 been made. If it had been necessary for the State to set aside or cancel these payments as impediments in the way of a recovery upon the bonds a different question would have been presented; but here the contention was broadly made that the railway company had not paid the obligations, or, in other words, that the pretended payments were never in law made; that they were void. Now, in the case cited it is held that in order for a Federal question to arise it must appear from the plaintiff's statement of his own cause of action; and it is there held, quoting the case of Gold Washing Co. *vs.* Keys, 96 U. S., 203, that "a cause cannot be removed from a State court simply because in the progress of litigation it may become necessary to give a construction to the Constitution or laws of the United States."

No removable question arises by reason of the fact that the State acquired the funds loaned to the railway company from the United States. The title of the State to that fund or its right therein were not issues in the case and were not questions which were raised or presented for decision.

The second and principal question which arises is whether the payments made by the railway companies in State treasury warrants are valid and binding upon the State. This question presents really the only controversy between the parties. Sec. 8, art. 7, of the constitution of 1845 states that in no case shall the legislature have the power to issue treasury warrants, treasury notes, or paper of any description intended to circulate as money. The warrants which were paid upon the obligations due the State were issued

under acts of the legislature of the State when that provision of the constitution was in force.

The various acts of the legislature of the State during the period of the war concerning the State revenues, its indebtedness and liabilities, and providing for the issuance of State warrants and the purpose for which they could be used and the amounts for which they could be issued, together with the size, shape, and color of the warrants issued and the small amount in which warrants
324 were issued, together with the history of the times and the well-known depleted condition of the State treasury during that period, together with the scarcity of an existing, reliable, and available circulating medium as money, convinces us that it was the purpose of various acts of the legislature during that time to give to the warrants issued during that period as much as possible a standing and character as money. The scarcity of money and the necessities of the State and the public were evidently inducements to the legislatures sitting during this period to provide uses to which warrants may be put in the way of requiring the State officers and authorizing railways to receive them in payment of debts due them. The evident purpose was in certain instances to give to the warrants a debt-paying power in order that they may be given an advanced value and could be used in some respects as money. When the warrants were issued it was not expected and intended that they would be immediately paid, for the State was not then in a financial condition to pay them, nor was the intention solely that they should serve the legal purposes of evidences of debts against the State, but the character of the legislation during the period of the war clearly indicates that the purpose was to give to these warrants the added quality of money, as far as it laid within the power of the legislature to accomplish that result. To set out all the acts of the legislatures bearing upon this subject, together with all of the facts which we have considered in connection therewith, with the well-known matters of history relating thereto, would unnecessarily prolong the opinion; therefore we close this branch of the case with the statement that, in our opinion, the warrants of the State issued during the period of the war after January 1st, 1862, were intended to be used and circulated as money, and in this connection it is well to say that we are of the opinion, from all that is shown by the record, together with various acts of the
325 legislatures during that time, that the payments made in warrants by the railway companies upon the obligations sued upon were in warrants issued after the time we have declared they were intended to circulate as money. What is said in this connection relieves us of passing upon the interesting questions presented in the briefs as to the burden of proof with reference to the alleged payments.

It is contended by appellant that if it should be held that the warrants in which the payments were made were illegal, that the State, through its officers, by authority of an act of the legislature having received the warrants as payments, the State was *in pari delicto* as to these payments; consequently she could not urge their

invalidity. The legislature, in the exercise of its functions like other members of the official family of the government, must confine its acts within the constitutional limits that circumscribe its powers, and when it performs acts in violation of an express command of the constitution no more validity and life can be given to such acts because of the fact that it may be one of the agents of the government highest in authority than would be given to acts of minor agents of the State.

The legislative department of the government, in the exercise of its high functions in creating laws to govern the conduct of other departments of the government, has no greater power by an unconstitutional law to bind the State than would be the case of an unauthorized or illegal act of an officer in some other branch of the public service. The doctrine of *in pari delicto* can have no application to the State in its sovereign capacity when the act out of which it springs is prohibited by the constitution. In such a case the act prohibited would be beyond the scope of the authority of any and all of the agents of the State from the highest and most exalted departments of the government to the lowest official who may represent it. If such was not the rule, the constitutional inhibition would in effect be a dead letter upon the books, for it
326 would permit parties who had pretended rights founded upon such illegal and prohibited acts to escape the effect of the offense denounced by the constitution whenever they reached the point that they had actually violated it by reaping the benefits of the unauthorized act. Such methods of indirect violation of the constitution should receive no more sanction than is the case when it has been expressly violated. These remarks also apply to whatever pretended rights that are asserted by appellant under the acts of the legislature of 1870. They had no power to cure the vice in the original contract of payments in warrants. If we would hold that the acts of 1870 were passed after the constitution of 1869 went into effect, we would also be required to hold that that constitution contained a similar provision as that of the constitution of 1845, which prohibited the legislature from authorizing warrants to be issued and circulated as money. Hence the rule that to some extent exists which authorizes the legislature to ratify a contract after the repeal of the law that prohibited it does not apply. The language of section 6, art. 12, of the constitution of 1869 upon this subject is identical with that of section 8, art. 7, of the constitution of 1845. The constitution of 1866 also contained a similar provision. There was no error committed by the court in its ruling upon the demurrers and in admitting the evidence complained of and in refusing to admit the evidence of witness Cave. This evidence, if it had been admitted, would not have led the trial court or this court to a different conclusion. According to calculation we find that the judgment was rendered for the proper amount. The court below rendered a personal judgment against appellant for the amount of the debt due the State by the Washington County railroad and by the Houston & Texas Central Railway Company and foreclosed the lien provided for in the acts of 1856 and the con-

tracts executed to the State by those two roads upon the entire line of road and appurtenances owned by the appellant. The
327 old Houston & Texas Central Railway Company when it acquired the assets and property of the old Washington County Railroad Company took it subject to the lien held by the State. Afterwards the Houston & Texas Central Railway Company was sold out and bought in by one Olcott, and the present company, known as The Houston & Texas Central Railroad Company, the appellant, was organized and created, and this last company acquired all of the road and appurtenances, &c., of the old Houston & Texas Central Railway Company and the Washington County Railroad Company, and under the law by which this present company was created and organized it took the property subject to the prior liens held by the State; but there is no provision of law or of its charter that makes the present company liable to a personal judgment against it for the debt due the State, and therefore the judgment rendered in this respect is erroneous; but the present company held the property subject to the lien of the State, and the State could foreclose that lien by a proceeding *in rem* against the property held by appellant, and as it held all of the property of the old roads and their corporate existence was extinct for the purpose of foreclosing this lien the appellant was the only party that was necessary to be made defendant; but, as contended by appellant, the court should not have foreclosed the lien upon all the road and its appurtenances, because the petition filed by the State claimed a lien upon that part of the road described in the findings of fact as extending one hundred and fifty miles in a northeasterly direction from the bank of Buffalo bayou, in the city of Houston, and twenty-one and one-half miles from the town of Hempstead to the town of Brenham, and, further, because this was the extent of the road completed on the 13th day of August, 1870, when the act of that date went into effect which provided that the liens held by the State should not attach to any extension of the road constructed after that time. The appellee contends that the legislature could not by this act affect or impair the lien held by
328 the State upon the entire road. If we could hold that the act of 1856, under which the liens were made and the contract executed, applied to roads subsequently constructed, we think, as the subject is one of contract between the State and the roads and as the funds thereby loaned the roads were not of the permanent school funds provided for in the constitution of 1845 and were under the control of the legislature, as held by the trial court, the State, through its legislature, and the railway companies could by agreement effect a change in the contract. The State, through its legislature, being a party to the contract, could by a subsequent act, with the consent of the roads, limit and restrict in part the operation of the liens as originally provided for in the act of 1856. Therefore this leads to the conclusion that the judgment below is erroneous in foreclosing the lien upon the entire road.

These errors in the judgment pointed out do not require us to reverse and remand the case, as from what appears in the record we can reform and affirm. Therefore the judgment as rendered below

is here reformed so as to render no personal judgment against the appellant and to only foreclose a lien upon that part of the road which the findings of fact shows was in existence on August 13th, 1870, together with all other property in connection therewith mentioned in the judgment below, such as depots, &c., together with the franchise of that part of said road. The cost of the case below is taxed against the appellant and the cost of this appeal against appellee. The judgment so reformed will be affirmed. Some other interesting questions were passed upon by the trial court, which, in view of the disposition of the questions ruled upon by us, need not be noticed. We desire to state that the able opinion of the trial court found in the record of this cause has been of much assistance to us in passing upon the questions considered.

FISHER,
Chief Justice.

329 (Endorsed:) With application No. 1628. No. 1714. The Houston & Texas Central R. R. Co., appellant, *vs.* The State of Texas, appellee. Appeal from Travis county. Opinion. Reformed and affirmed. Fisher, chief justice. Filed in court of civil appeals. 3rd supreme judicial district, Austin, Texas, June 9, 1897. R. H. Connerly, clerk. Filed in supreme court December 1, 1897. Chas. S. Morse, clerk.

Judgment of Court of Civil Appeals.

Rendered June 9th, 1897.

HOUSTON & TEXAS CENTRAL RAILROAD COMPANY *vs.* THE STATE OF TEXAS. } No. 1714.

Appeal from district court of Travis county.

Opinion by Chief Justice Fisher.

This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this court that there was no error in the judgment of the court below except in so far as it renders a personal judgment against appellant and fixes and forecloses a lien upon all of its road-bed and appurtenances, *and* this court, after considering all the facts in the record, together with the law relating thereto, concludes that the appellant, The Houston & Texas Central Railroad Company, took possession of the hereinafter-described property, subject to the lien herein foreclosed, and that said property in its hands is subject to said debt and lien held by the State of Texas. It is therefore considered, ordered, adjudged and decreed that the debt of the State of Texas is hereby established for the amount stated in the judgment of the court below, and that the old Houston & Texas Central Railway Company and the Washington County Railway Com-
330 pany are liable therefor and that the property formerly belonging to these two roads, now held by appellant, here-

after described, is subject to said debt and lien, but that the appellant is not liable to a personal judgment in favor of appellee; therefore be it further ordered and decreed that the judgment of the court below be so reformed as to foreclose the lien asserted by the State on the following-described property for the sum of six hundred and seventy-three thousand one hundred and nine and $\frac{56}{100}$ dollars, with interest from February 29th, 1896, and all costs of suit in the court *court* below, to wit, upon its line of railroad beginning at the original terminus of said road, on the left bank of Buffalo bayou, in the city of Houston, in Harris county, Texas, and running thence in a general northwesterly direction through the counties of Harris, Waller, Grimes, Brazos, Robertson, Falls, and Limestone, including the 1st, 2d, 3rd, 4th, 5th, and 6-h sections of twenty-five miles each, to a point one hundred and fifty miles from the place of beginning, about three miles south of Kosse, in Limestone county, Texas, and upon its line of railroad as follows, beginning at the point of junction of its Western branch with the track of the main line of the Houston & Texas Central railroad in the town of Hempstead, in Waller county, Texas, thence in a general westerly direction through Waller and Washington counties, for about twenty-one and one-fourth miles, to a point in the town of Brenham, in Washington county, Texas, and upon the charter rights of said appellant company incident or appurtenant to said above-described two lines of railroad, including the road-bed, right of way, grading, bridges, iron, equipments and masonry, and all stock subscribed for in said companies upon said parts of said road, and upon all depots and depot stations, and all of the property owned by said company or companies necessary for their business, with all rights and franchises belonging to the parts of said road above described, and the
331 clerk of the court below is hereby commanded to issue an order of sale to the sheriff or any constable of Travis county, Texas, commanding him to sell said above-described property or so much thereof as may be necessary for the satisfaction of the judgment herein, with interest from date when originally entered in the court below, to wit, February 29th, 1896, but that no execution issue against appellant for any amount remaining due, should any remain due after said sale, that as thus reformed the judgment of the court below is affirmed, that the appellee, The State of Texas, pay all costs in this cause in this court expended and this decision be certified below for observance.

Motion for Rehearing in Court of Civil Appeals.

Filed June 23, 1897.

In the Court of Civil Appeals, Third Supreme Judicial District, at Austin.

HOUSTON & TEXAS CENTRAL RAILROAD COMPANY, Appellant, *vs.* STATE OF TEXAS. } No. 1714.

Appeal from Travis county.

Now comes The Houston & Texas Central Railroad Company, appellant in the above-entitled cause, and moves this court to set aside the judgment rendered by this court on the 9th day of June, 1897, reforming and affirming the judgment of the court below in this cause, and grant appellant a rehearing herein for the reasons following, to wit:

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First.

This court erred in overruling and in not sustaining appellant's first assignment of error, reading as follows:

"The court erred in overruling and denying defendant's application to remove this cause into the circuit court of the United States for the western district of Texas, as shown by defendant's bill of exceptions No. 1."

Statement.

The above assignment is presented in Appellant's Brief, pages 19–24.

Second.

This court erred in overruling and in not sustaining appellant's second and thirty-eighth assignments of error, reading as follows:

Second. "The court erred in overruling defendant's general demurrer to plaintiff's original petition herein."

Thirty-eighth. "The court erred in rendering judgment against defendant at all without first or at the same time rendering judgment against the Houston and Texas Central Railway Company and the Washington County Railroad Company, who contracted the indebtedness declared on, and by whom alone, if by any one, it was due, and when no evidence was offered to show that the said Houston and Texas Central Railway Company was defunct, or that its corporate existence had ceased, or that it had any directors who had become and are trustees for its creditors and stockholders upon the sale of its corporate rights, franchises, and property."

Statement.

The above assignments of error are presented and discussed together in Appellant's Brief, pages 24–26.

Third.

The said court of civil appeals erred in overruling and in
333 not sustaining appellant's third and fourth assignments of error, reading as follows:

Third. "The court erred in overruling defendant's II demurrer, as contained in its first supplemental answer to the first special plea contained in plaintiff's first amended supplemental petition, and to so much of said supplemental petition as alleged in effect that the treasury warrants therein referred to were void because issued in violation of the provisions of the constitution of the State of Texas prohibiting the issuance of treasury warrants intended to circulate as money, and were bills of credit emitted by the State in contravention of the provisions of section 10, article 1, of the Constitution of the United States, which demurrer was upon the ground that if said warrants were issued in violation of the constitution of Texas and of the United States, as alleged, it appeared from said supplemental petition that they were so issued by plaintiff and by it put in circulation among its citizens, and having been so issued and put in circulation, and after having contracted and agreed with the defendant to receive the same as such payment, plaintiff, The State of Texas, accepted and received the treasury warrants so paid in without protest or objection, and the transaction having been completed many years ago and being fully executed, plaintiff, being the wrong-doer, if there was wrong, and *in pari delicto*, was not entitled to have the same reopened and set aside in order that it might take advantage of its own wrong, and was estopped to question or deny the validity of the transaction in this action instituted in its own behalf, and having received and accepted said warrants as such payment without protest or objection, it could not now repudiate its action."

Fourth. "The court erred in overruling defendant's III demurrer, as contained in its first supplemental answer to the second special plea contained in plaintiff's first amended supplemental peti-
334 tion, and to so much of said supplemental petition as alleged in effect that defendant should not be allowed credit for payments made in treasury warrants, and that such treasury warrants were illegal because it was alleged that they were issued in aid of the rebellion, which demurrer was upon the ground substantially that if the warrants used in making the payments in question were issued in aid of the so-called rebellion, as alleged, it appeared from said supplemental petition that they were issued by plaintiff and by it put in circulation among its citizens, and having been so issued and put in circulation, and after having contracted and agreed with defendant to receive the same as such payment, plaintiff, The State of Texas, accepted and received the treasury warrants so paid in without protest or objection, and the transaction having been completed many years ago and being fully executed, plaintiff, being the wrong-doer, if there was wrong, and *in pari delicto*, was not entitled to have the same reopened and set aside in order that it might take advantage of its own wrong, and was estopped to ques-

tion or deny the validity of the transaction in this action instituted in its own behalf, and having received and accepted said warrants as such payment without protest or objection, it could not now repudiate its action."

Statement.

The above assignments are presented and discussed together in Appellant's Brief, pages 26–33, and authorities sustaining the same are there cited. We also refer to the printed arguments on file in behalf of appellant for further discussion of the questions presented by these assignments.

Fourth.

This court erred in not considering and in not sustaining appellant's fifth assignment of error, reading as follows:

"The court erred in overruling defendant's IV demurrer,
335 as contained in its first supplemental answer to the last special plea contained in said first amended supplemental petition, and to so much of said supplemental petition as alleged in effect that the said treasury warrants at the time such payments were made were practically worthless and without market value, and that such payments were repudiated by the officers of the State soon after the war, which demurrer was upon the ground substantially that the market or other value of such warrants was immaterial and irrelevant to any issue in the case; that the State could not legally complain of having paid the face value of its indebtedness, and that the time when it was alleged said payments were sought to be repudiated by the officers of the State was long after such payments had been made and the transaction completed and fully executed."

Statement.

The above assignment is presented and discussed in Appellant's Brief, pages 34–36.

Fifth.

This court erred in not considering and in not sustaining appellant's seventh assignment of error, reading as follows:

"The court erred in admitting, over the objection of defendant, the testimony of plaintiff's witness, F. R. Lubbock, respecting the market value during the years 1863 and 1864 of treasury warrants issued by the State of Texas and the price for which witness sold the warrants issued to him, as shown by defendant's bill of exceptions No. 3."

Statement.

The above assignment is presented and discussed in Appellant's Brief, pages 36–38.

Sixth.

This court erred in not considering and in not sustaining appellant's eighth, ninth, and sixteenth assignments of error, reading as follows:

336 Eighth. "The court erred in admitting, over the objections of the defendant, the message of Governor E. J. Davis to the twelfth legislature, dated August 6-h, 1870, vetoing the act for the relief of the Houston and Texas Central Railway Company, as shown by defendant's bill of exceptions No. 4."

Ninth. "The court erred in admitting, over the objections of the defendant, extracts from the messages of Governor Lubbock to the legislature dated November 15th, 1861, February 5th, 1863, and November 5th, 1863, and from the messages of Governor Murrah dated May 11, 1864, and October 20th, 1864, relating to the financial condition of the State at those dates, and to the existence, value, and use of treasury warrants, which were objected to by the defendant upon the grounds substantially (1) that the same were irrelevant; (2) that the purpose and intent of the legislature could not be thus shown; (3) that such evidence was inadmissible to show the meaning of such laws; (4) that said messages were not evidence of the facts therein stated, and (5) that it had not been shown that the warrants used in making the payments in question were of the same character as those referred to in said messages, all as shown by defendant's bills of exceptions Nos. 5, 6, 7, 9, and 10, presenting separately the same objections and question."

Sixteenth. "The court erred in admitting, over the objections of defendant, an extract from the recommendations of C. R. Johns, former comptroller of the State of Texas, made in his annual report as comptroller of public accounts in November, 1861, as shown by defendant's bill of exceptions No. 17."

Statement.

The above assignments are presented and discussed together in Appellant's Brief, pages 38–41.

Seventh.

337 The court erred in not considering and in not sustaining appellant's tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth assignments of error, reading as follows:

Tenth. "The court erred in admitting, over the objection of the defendant, certificate of R. W. Finley, comptroller of public accounts of the State of Texas, setting forth copies of certain entries therein specified as contained in the books of his department showing the charging of certain eight per cent. State bonds to the military board during the years 1862, 1863, and 1865 and other entries in reference to such bonds during said years, as shown by defendant's bill of exceptions No. 11."

Eleventh. "The court erred in admitting, over the objection of defendant, a copy of a statement headed 'The State of Texas school fund in account with C. H. Randolph, treasurer, for the two months ending the 31st day of December, 1864,' certified to by R. W. Finley, comptroller of public accounts, and W. B. Wortham, treasurer of the State of Texas, as shown by defendant's bill of exceptions No. 12."

Twelfth. "The court erred in admitting, over the objection of defendant, copy of a statement headed 'The State of Texas school fund in account with C. H. Randolph, treasurer, for the two months ending on the 28th day of February, 1865,' certified to by R. W. Finley, comptroller of public accounts, and W. B. Wortham, treasurer of the State of Texas, as shown by defendant's bill of exceptions No. 13."

Thirteenth. "The court erred in admitting, over the objection of defendant, a copy of a statement — 'The State of Texas school fund in account with C. H. Randolph, treasurer, for the quarter ending the 31st day of May, 1865,' certified to by R. W. Finley, comptroller of public accounts, and W. B. Wortham, treasurer of the State of Texas, as shown by defendant's bill of exceptions No. 14."

Fourteenth. The court erred in admitting, over the objection of defendant, copy of a statement headed 'Statement of treasurer's receipts from revenue and other sources during the months of January and February, 1865,' certified to by R. W. Finley,
338 comptroller of public accounts, and W. B. Wortham, treasurer of the State of Texas, as shown by defendant's bill of exceptions No. 15."

Fifteenth. "The court erred in admitting, over the objection of defendant, copy of a statement headed 'Statement of treasurer's receipts from revenue and other sources during the month of April, 1865,' certified to by R. W. Finley, comptroller of public accounts, and W. B. Wortham, treasurer of the State of *the State of* Texas, as shown by defendant's bill of exceptions No. 16."

Statement.

The above assignments are presented and discussed together in Appellant's Brief, pages 41–44.

Eighth.

The court erred in not considering and in not sustaining appellant's eighteenth and nineteenth assignments of error, reading as follows:

Eighteenth. "The court erred in admitting, over the objection of defendant, the treasury warrants taken from the basement of the comptroller's office and introduced in evidence in connection with the testimony of plaintiff's witness W. C. McCall, as shown by defendant's bill of exceptions No. 19."

Nineteenth. "The court erred in admitting, over the objection of defendant, the treasury warrants taken from the basement of the comptroller's office and introduced in evidence in connection with the testimony of plaintiff's witness G. A. Proctor, as shown by defendant's bill of exceptions No. 20."

Statement.

The above assignments are presented and discussed together in Appellant's Brief, pages 44–47.

Ninth.

This court erred in overruling and in not sustaining ap-
339 pellant's twentieth assignment of error, reading as follows:
"The court erred in excluding, upon the objection of plaintiff, cross-interrogatory No. 2 propounded to and the answer thereto by E. W. Cave, whose depositions were taken by the plaintiff, as shown by defendant's bill of exceptions No. 21."

Statement.

The above assignment is presented in Appellant's Brief, pages 47–50.

Tenth.

This court erred in overruling and in not sustaining appellant's twenty-first assignment of error, reading as follows:
"The court erred in its finding and conclusion that all the allegations of fact contained in plaintiff's original petition are true as therein stated, for there was not due and unpaid on the bonds of the Houston and Texas Central Railway Company described in said petition on the first day of May, 1870, principal and interest, the sum of $657,324.35, as alleged in said petition, but only the sum of $551,550.00 was so due and unpaid on said date, and in finding that on said bonds of the Washington County Railroad Company there was, on May 1st, 1870, $103,840.01, when only $48,497.17 was due, being the balances, after allowing defendant the credit for the amounts theretofore paid by said companies, as pleaded in its first amended answer, including the amounts paid in treasury warrants, and there was not due plaintiff at the time of the filing of said petition the several amounts therein alleged to be then so due, because all of said indebtedness had been theretofore fully paid off and discharged."

Statement.

The above assignment is presented and discussed in Appellant's Brief, pages 50, 51.

Eleventh.

This court erred in not considering and in not sustaining appellant's twenty-second assignment of error, reading as follows:
340 "The court erred in finding as a fact that neither the State nor the railroad companies discriminated as to the class of warrants received by said companies for carrying services or used in making the payments in question, and that some of all kinds were used in *in* making the payments, because there is no evidence to support such finding and conclusion and no evidence that said railroad received or used in making such payments other than legal and valid warrants."

Statement.

The above assignment is presented in Appellant's Brief, pages 51, 52.

Twelfth.

This court erred in overruling and in not sustaining appellant's twenty-third assignment of error, reading as follows:

"The court erred in finding as a fact that the payments made in treasury warrants on the indebtedness in question were charged off the account, and the account of the State with defendant was restated May 1st, 1870, so as to ignore the said payments in treasury warrants, because there is no evidence whatever to sustain or support such finding, but the uncontradicted evidence shows that said account and said indebtedness as it stood on the books of the State on May 1st, 1870, recognized and allowed defendant full credit for *for* said payment in treasury warrants, and that if the same was ever charged off by the State or the account restated so as to ignore the same it was subsequent to May 1st, 1870."

Statement.

The above assignment is presented in Appellant's Brief, pages 53, 54.

Thirteenth.

This court erred in not considering and in not sustaining appellant's twenty-fourth assignment of error, reading as follows:

"The court erred in finding that it was not proved that the
341 governor was threatening to sell defendant's railroad to force the repayment of the amounts paid in treasury warrants or whether he would have resorted to a suit to enforce such payments, because it was not disputed, and the evidence abundantly established the fact."

Statement.

The above assignment is presented in Appellant's Brief, pages 54–56.

Fourteenth.

This court erred in not considering and in not sustaining appellant's twenty-fifth assignment of error, reading as follows:

"The court erred in finding and holding that by the act approved January 11th, 1862, the time for paying the interest and sinking fund maturing on the loans declared on in plaintiff's petition was extended until six months after the close of the war, and that for that reason the payments in question made in treasury warrants were made before the same were due and when no payment on account of said indebtedness was required to be made, because the said act of January 11th, 1862, only extended the time for making such payments until the first day of January, 1864, or until six months after the termination of the war, if it should terminate before said date."

Statement.

The above assignment is presented in Appellant's Brief, pages 56–58.

Fifteenth.

This court erred in not considering and in not sustaining appellant's twenty-sixth, fortieth, and forty-first assignments of error, reading as follows:

"Twenty-sixth. The court erred in finding and concluding that the acts of the legislature of the State of Texas authorizing the payments in question to be made in treasury warrants were
342 passed in aid of the rebellion and were for that reason void, because there was no evidence whatever to support and the evidence is insufficient to sustain the finding that the acts or either of them were passed in aid of the rebellion, and there was nothing upon the face of said acts indicating that they were passed for any such purpose.

"Fortieth. The court erred in denying defendant credit for and holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant on the ground that the laws authorizing such payments to be made in treasury warrants were passed in aid of the rebellion and for that reason were void, when there was no evidence to support or sufficient to sustain such finding, and when there was nothing upon the face of said laws to indicate that they were passed for any such purpose or were for any reason invalid.

"Forty-first. The court erred in denying defendant credit for and in holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant on the ground that such treasury warrants were issued in aid of the rebellion, and were for that reason illegal, when there was no evidence whatever to show that the warrants or any of them used in making such payments were other than legal and valid warrants issued before or during the war in the usual course of business on appropriations duly made for the support of the civil government of the State or for other lawful purposes and when there was no evidence whatever to support or sustain said judgment."

Statement.

The above assignments are presented together and discussed in Appellant's Brief, pages 58–70; and we also refer to the printed arguments in behalf of appellant on file and wherein the
343 questions presented by these assignments are discussed.

Sixteenth.

This court erred in overruling and in not sustaining appellant's twenty-seventh, forty-second, and forty-third assignments of error, reading as follows:

"Twenty-seventh. The court erred in finding and concluding that the acts of the legislature of the State of Texas authorizing the payments in question in treasury warrants were passed in aid of legis-

lation intended to cause State treasury warrants to be issued to circulate as money and with a view of stimulating their circulation as money and were for that reason void, because there was no evidence whatever to support and the evidence is insufficient to sustain such finding, and there was nothing upon the face of said acts indicating that they were passed for any such purpose.

"Forty-second. The court erred in denying defendant credit for and holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant on the ground that the laws authorizing such payments to be made in treasury warrants were passed in aid of legislation intended to cause State treasury warrants to be issued to circulate as money, contrary to the constitution of the State, and as bills of credit, contrary to the Constitution of the United States, and for those reasons were void, when there was no evidence whatever to support or sufficient to sustain such finding, and when there was nothing upon the face of said laws to indicate that they were passed for any such purpose or were for any reason invalid.

"Forty-third. The court erred in denying defendant credit for and holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of
344 Texas, and in rendering judgment against defendant on the ground that such treasury warrants were issued with the intention that they should circulate as money, contrary to the constitution of the State, and as bills of credit, contrary to the Constitution of the United States, and were for those reasons illegal, when there was no evidence to support or sustain such finding and judgment or to show that any of the warrants were other than legal and valid warrants, drawn by the comptroller in the usual course of business upon the treasury of the State to pay appropriations theretofore duly made by the legislature of the State for the support of the State government, by which means alone money could be drawn from the treasury of the State."

Statement.

The above assignments are presented and discussed together in Appellant's Brief, pages 70–80, and are also discussed in the printed arguments on file in behalf of appellant, to which reference is also made.

Seventeenth.

This court erred in overruling and in not sustaining appellant's twenty-eighth assignment of error, reading as follows:

"The court erred in finding and concluding that the companies under which defendant claims, by receiving treasury warrants of the State of Texas at par in order to be entitled to use them in making the payments in question, were aiding the rebellion, and were also in so doing supporting the circulation of treasury warrants issued to circulate as money, in violation of the constitution of the State and the United States, and that for such reason defendant

acquired no right thereby to use treasury warrants in making such payments, and that State officers had no authority to accept such payments, and that they were void, because there is no evidence to support and the evidence fails to sustain such findings."

345 *Statement.*

The above assignment is presented and discussed in Appellant's Brief, pages 80–83, and is also discussed in the printed arguments filed in behalf of appellant, to which reference is made.

Eighteenth.

This court erred in overruling and in not sustaining appellant's twenty-ninth assignment of error and in not considering and in not sustaining appellant's thirtieth and thirty-first assignments of error, reading as follows:

"Twenty-ninth. The court erred in concluding and holding as matter of law that no presumption could arise or exist that the officers of the State of Texas accepting the payments in question made in treasury warrants accepted only such warrants as were issued in aid of the civil government."

"Thirtieth. The court erred in concluding and holding as matter of law that the burden of proof was upon defendant to plead and prove the particular kind and character of warrants used in making the payments in question, or that defendant was required to do more than plead and prove the payment in such treasury warrants as were acceptable to and were in fact accepted by the comptroller of the State of Texas, who was by law authorized to receive the same as such payments."

"Thirty-first. The court erred in concluding and holding as matter of law that the burden of proof was on defendant to show that the treasury warrants used in making such payments were legal and valid or to show more than the fact that the warrants used in making such payments were accepted by the officers authorized to receive the same."

Statement.

The above assignments are presented and discussed together in Appellant's Brief, pages 83–88, and are also discussed in the
346 printed arguments filed in behalf of appellant, to which reference is made.

Nineteenth.

This court erred in overruling and in not sustaining appellant's thirty-second and thirty-third assignments of error, reading as follows:

"Thirty-second. The court erred in finding and concluding that the legislature of the State of Texas and all the officers of said State were acting outside of their authority to represent the State, and that they alone and not the State of Texas were *in pari delicto* in

authorizing and receiving such payments and in subsequently ratifying the same.

"Thirty-third. The court erred in holding that the payments in question did not constitute an executed matter upon the ground that nothing was executed or accomplished by said payments, but that they were void and did not amount to payments in law, and that they were not received by the State as payments, but were received by the State's officers, because there is no evidence to support and the evidence is insufficient to sustain such finding, and the same is erroneous."

Statement.

The above assignments are presented and discussed together in Appellant's Brief, pages 89–91. They are also discussed in the printed arguments filed in behalf of appellant; to which we invite the court's attention again.

Twentieth.

This court erred in overruling and in not sustaining appellant's thirty-fourth assignment of error, reading as follows:

"The court erred, as matter of law, in holding that the legislature of the State of Texas had no power in 1870 to validate the said payments, and did not validate them."

347 *Statement.*

The above assignment is presented and discussed in Appellant's Brief, pages 91–96, and is also discussed in printed arguments filed in behalf of appellant.

Twenty-first.

This court erred in not considering and in not sustaining appellant's thirty-ninth assignment of error, reading as follows:

"The court erred in finding and holding, as matter of law, that the entire amount of the indebtedness claimed by plaintiff against defendant, and which the court found to exist, was due on the ground that defendant had been in default for more than ten days in making payments of interest and sinking fund thereon, whereas if said indebtedness exists and defendant is in default thereon it appears that such default is due to the *bona fide* and reasonable belief and contention upon defendant's part that it had paid off and satisfied said indebtedness in full by the payments in question."

Statement.

The above assignment is presented and discussed in Appellant's Brief, pages 101, 102.

Twenty-second.

This court erred in overruling and in not sustaining appellant's thirty-fifth assignment of error, reading as follows:

"The court erred in rendering judgment against defendant for the sum of $673,109.56 as principal and interest to the date of the judg-

ment, which is more than the amount claimed in plaintiff's petition, and when, according to the plaintiff's pleadings and the undisputed evidence, plaintiff, if entitled to recover at all, was in no event entitled to recover more than $645,467.27."

Statement.

The above assignment is presented and the calculation showing the error of the court below as complained of by the assignment is pointed out in Appellant's Brief, pages 102–105.

348 Twenty-third.

This court erred in overruling and in not sustaining appellant's forty-fourth and forty-fifth assignments of error, reading as follows:

"Forty-fo-rth. The court erred in rendering judgment against defendant when the undisputed evidence showed that the indebtedness declared on in plaintiff's petition had been fully paid off and satisfied upon the ground that the payments thereon shown to have been made in State treasury warrants were invalid, or that defendant was not entitled to credit therefor, when it appeared from the undisputed evidence that if the treasury warrants used in making the payments were issued in aid of the rebellion or were issued to circulate as money, contrary to the constitution of the State, or were bills of credit emitted, contrary to the Constitution of the United States, they were so issued by the State of Texas and were by it accepted without protest or objection and willingly as valid and lawful payments, and the transaction was fully executed, and that the State was *in pari delicto* if there was wrong in the transaction."

"Forty-fifth. The court erred in finding and holding that defendant was not entitled to credit for the amount shown to have been paid on account of the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant, when at the time such payments were made there were valid laws of the State of Texas in force authorizing such payments to be made in treasury warrants on the condition, in effect, that the comptroller should be satisfied that the company making such payments had accepted such warrants at par with specie for freight and passenger fares upon its railroad, and when the undisputed evidence showed that the comptroller, being so satisfied, had accepted such warrants as such payments and at the time gave due credit therefor, when there was no evidence what-
349 ever to show that the warrants so used in making such payments were illegal or invalid or other than legal and valid warrants issued before or during the war in the usual course of business on appropriations duly made for the support of the civil government of the State or for other lawful purposes, and when there was no evidence whatever of any illegality in the transaction with respect to the kind and character of warrants used or the action of the company in making such payments or otherwise, and when said payments were received and accepted without protest or objection

at the time and were acknowledged to be and treated as valid by the government of the State of Texas at that time and frequently afterwards, and when the transaction was and had been for a great number of years fully executed and completed, and when it appeared that if said warrants were illegal or if there was any illegality whatever in the transaction plaintiff was the wrong-doer and was *in pari delicto* and was not entitled to relief against the same."

Statement.

These assignments are presented and discussed together in Appellant's Brief, pages 103–110, and are also discussed in the printed arguments filed herein in behalf of appellant and to which the attention of this court is again invited.

Twenty-fourth.

This court erred in overruling and in not sustaining appellant's forty-sixth assignment of error, reading as follows:

"The court erred in rendering judgment against defendant when the uncontradicted evidence showed that the indebtedness declared on in plaintiff's petition had been fully paid and satisfied and ceased to exist upon the ground that the payments on said indebtedness made in treasury warrants, as shown by the evidence, were invalid or that defendant was not entitled to credit therefor, when it appeared that at the time such payments were made there were valid laws of the State of Texas in force authorizing such pay-
350 ments in such warrants upon the conditions specified in such laws, which conditions the undisputed evidence showed were fully complied with."

Statement.

This assignment is presented and discussed in Appellant's Brief, pages 110–112.

Twenty-fifth.

This court erred in finding and holding "that such payments as were made in State warrants were in treasury warrants intended by certain acts of the legislature of the State to circulate as money," because there is absolutely no evidence in the record to that effect and said finding and holding is without any evidence to support it. It is, moreover, strictly against the presumption which the law indulges in the absence of proof to the contrary that the warrants were legal and the transaction was in all respects lawful, and that only valid warrants were used in making the payments in question.

Twenty-sixth.

This court erred in finding and holding "that the amount due the State is the amount for which the judgment was rendered," because a calculation based upon the State's petition and the undisputed evidence will demonstrate that the judgment is for more than it should have been under any aspect of the case.

Statement.

See calculation as made in Appellant's Brief, pages 102–103.

Twenty-seventh.

This court erred in looking to and considering "the various acts of the legislature of the State during the period of the war concerning the State's revenues, its indebtedness and liabilities, and providing for the issuance of State warrants and the purpose for which they could be used and the amount for which they could be *used*," as evidence that the warrants in question were illegal and as reasons or grounds for holding the laws under which the pay-
351 ments were made as unconstitutional. Such matters were not evidence in the case, and the constitution or laws authorizing such payments can properly be tested only by their own terms and provisions read in the light of the constitution.

Twenty-eighth.

This court erred in considering and basing its judgment in part upon "the size, shape, and color of the warrants issued and the small amount in which warrants were issued," because there is absolutely no evidence in the record showing "the size, shape, and color or denomination of the warrants" used in making the payments in question, and, so far as the record shows, they may have been the same in such respects as are usually issued at this time.

Twenty-ninth.

This court erred in the conclusion "that it was the purpose of various acts of the legislature during that (the war period) time to give the warrants issued during that period as much as possible a standing and character as money," because such conclusion, as shown by the context, was based upon matters outside the record and not proper to be considered and because the same is contrary to and without support in the evidence.

Thirtieth.

This court erred in its opinion that the warrants were intended to be used in some respects as money, and that the character of the legislation was to give to such warrants the added quality of money, because there is no evidence in the record to support or justify the same, and this court cannot attribute to the legislature a design to violate the constitution and indulge in inferences of fact, unsupported by the evidence in the record, to hold the laws unconstitutional, or look to general legislation in order to determine that a given law is unconstitutional, but must test the constitutionality of each act by its own terms.

352 Thirty-first.

This court erred in considering and basing its judgment upon matters and facts not found by it or set forth in its opinion or find-

ings, as will appear from that part of its opinion reading as follows: "To set out all the acts of the legislatures bearing upon this subject, with all of the facts which we have considered in connection therewith, with the well-known matters of history relating thereto, would necessarily prolong this opinion, etc.," and erred in not finding and stating all the facts upon which it based its finding and judgment.

Thirty-second.

This court erred in its conclusion that "the warrants of the State issued during the period of the war after January 1st, 1862, were intended to be circulated as money, and that the payments made in treasury warrants by the railway companies upon the obligations sued upon were in warrants issued after the time we have declared they were intended to circulate as money," because there is no evidence in the record to support such finding, and because there is no evidence to show that the warrants used in making the payments in question were issued after January 1st, 1862, or were issued at any time to be circulated as money.

Thirty-three.

If the warrants used in making the payments in question were issued to be circulated as money, and if the payments were therefore illegal, as found by this court, then this court erred in not holding that the State was *in pari delicto* and could not urge their invalidity.

Thirty-fourth.

This court erred in not holding that the State, by the legislation of 1870, recognized and ratified the validity and legality of the payments in question. That legislation was not only valid
353 as a ratification of the payments, but was also evidence conclusive that the payments were legal in all respects.

Thirty-fifth.

This court erred in holding that appellant was not entitled to remove this cause into the circuit court of the United States, and in affirming the order of the court below denying appellant's petition to remove the same.

Thirty-sixth.

This court erred in rendering judgment foreclosing a lien upon a part of appellant's railroad and other property, because there is no evidence in the record to support said judgment or to warrant this court in foreclosing a lien upon any particular part of appellant's railroad, franchises, or other property.

Thirty-seventh.

There is nothing upon the face or in the terms of any of the statutes of this State material in this case and passed upon by this

court that show- the same to be in conflict with the constitution or *to* show an unlawful purpose upon the part of the legislature in enacting the same, and this court erred in holding any such laws unconstitutional and in attributing to the legislatures a design and purpose in enacting the same to contravene the constitution of this State.

Thirty-eighth.

The acts of the legislature of the State of Texas approved December 16, 1863, May 28, 1864, and November 16, 1864, referred to in the opinion of this court, and the acceptance of the treasury warrants, in accordance with the provisions thereof, by the railway companies under which appellant claims, at par with specie for freight and passenger fares constituted a contract between
354 & 355 said companies and the State of Texas within the protection of the Constitution of the United States, and which could not, under said Constitution, be impaired by any subsequent act of the State, and this court erred in not so holding.

Thirty-ninth.

The laws authorizing the payments in question to be made in treasury warrants were valid when passed, and all persons within the limits of the State were subject thereto. The action of the railway companies under which appellant claims in accepting said warrants at par with specie for freight and passenger fares in order to use the same in making the payments in question was lawful under the laws and policy of said State at the time. The making of said payments by said railway companies and the allowance of credit therefor by the State was, at the time the transactions occurred, in compliance with the laws of said State as then in force and applicable to the parties to the transaction, as well as to all other persons within the limits of the State. Said companies thereby acquired a vested right to credit for said payments within the protection of the Constitution of the United States, especially the fourteenth amendment of said Constitution, and of which they could not be deprived by any subsequent change in the law or public policy of said State, and this court erred in not so holding.

Fortieth.

The finding and decision of this court to the effect that the warrants used in making the payments in question were illegal as having been issued with the intention that the same should circulate as money is without any support in the evidence, and is contrary to law. There is no evidence whatever in the record to show the kind, character, or denomination or the purposes for which the same were issued, and it has never been contended or even suggested by the attorney general that any of them were issued in the ab-
356 sence of an appropriation duly made by the legislature, or otherwise than in obedience to such appropriation. It is, as a matter of law, impossible for a warrant drawn by the comptroller

in the performance of his duty for the purpose of paying appropriations previously made by the legislature and payable on presentation to the treasurer to be in contravention of the State constitution prohibiting the issuance of treasury warrants, treasury notes, or paper intended to circulate as money, or of the national Constitution, prohibiting the States from emitting bills of credit. The mere inability of the State to pay all such warrants on presentation cannot have the effect to render illegal warrants drawn in obedience to appropriations and representing lawful debts and which would be lawful if the treasurer had money with which to pay the same.

Forty-first.

If it be true, as contended by the State and as found by this court, but which appellant denies, that the warrants used in making the payments in question were issued with the intention that they should circulate as money, it is, nevertheless, true beyond dispute that they represented valid debts of the State, and that upon their surrender by the railway companies in making said payments they were cancelled by the State and the indebtedness of the State evidenced by them was thereby extinguished. The State cannot, while enjoying the benefits of the transaction, repudiate it and enforce the payment over again of a debt already satisfied by the cancellation at her own instance of her own indebtedness for the same amount. The warrants were evidence of the indebtedness of the State, and by the transaction in question the State cancelled her indebtedness to the amount represented by the warrants. The State is, therefore, in law and good conscience, estopped to claim again the payment of a debt already fully satisfied by the cancellation of her own indebtedness in the same amount.

357 Forty-second.

This court erred in holding and deciding in effect that the State was not bound and could not be bound by the laws in question and the action of its executive officers under the same accepting the warrants in question and allowing the railway companies credit therefor upon the indebtedness sued on. The laws were passed by the lawful legislatures of the State and the only bodies claiming or that could claim to be the legislature of the State during the period in which they sat, and the transactions in question were conducted by the lawful officers of the State and the only persons claiming to be such officers and in obedience to such laws. The power exercised was solely that of the State, and the State enjoyed all the benefits of the transaction.

And appellant further represents that the Honorable M. M. Crane, attorney general of the State of Texas, is attorney of record for appellee, The State of Texas, in this cause, and that he resides and has his office at the capitol, in the city of Austin, and service hereof upon him as authorized by law is prayed for; and appellant further prays, for each and all of the reasons hereinbefore stated, a rehearing of this cause be granted, and that the judgment heretofore entered

herein reforming and affirming the judgment of the court below be set aside and vacated and the judgment of the court below reversed and judgment be here rendered in favor of appellant, or if for any reason judgment cannot be here rendered for appellant, then that the cause be remanded.

J. P. BLAIR,
BAKER, BOTTS, BAKER & LOVETT,
Attorneys for Houston & Texas Central Railroad Company, Appellant.

358 (Endorsed:) Motion No. 391. No. 1714. H. & T. C. R. R. Co., appellant, *vs.* The State of Texas, appellee. Motion for rehearing. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, June 23, 1897. R. H. Connerly, clerk. With application No. 1628. Filed in supreme court December 1, 1897. Chas. S. Morse, clerk.

Order of Court of Civil Appeals, Made November 3, 1897, Overruling Motion for Rehearing and Taxing Costs against Appellant.

H. & T. C. R'y Co. *vs.* The State of Texas. } Motion 391. #1714.

Appeal from Travis county.

Motion for Rehearing.

The motion is overruled and it is ordered that the appellant, The Houston & Texas Central Railroad Company, pay all the costs of this motion.

359 In the Supreme Court of Texas, October Term, 1897.

Houston & Texas Central Railroad Company *vs.* State of Texas.

Petition for writ of error to the court of civil appeals for the third supreme judicial district.

To the honorable the supreme court of Texas:

Your petitioner, The Houston & Texas Central Railroad Company, applying for a writ of error to the court of civil appeals for the third supreme judicial district of Texas for the removal of the above-entitled cause from said court into this honorable court, respectfully represents that said cause was instituted in the fifty-third judicial district court in and for Travis county by The State of Texas, as plaintiff, against your petitioner, as defendant, for the recovery of a large balance claimed to be due on a part of the special school fund established and created under and by virtue of the act entitled "An act to establish a system of schools," approved January

31st, 1854 (Gen. Laws 1854, page 17), lent to the Houston & Texas Central Railway Company and to the Washington County Railroad Company in pursuance of an act entitled "An act to provide for the investment of the special school fund in the bonds of railroad companies incorporated by the State," approved August 13th, 1856 (Gen. Laws 1856, page 31), and the acts amendatory thereof (Gen. Laws 1856, page 57, and Gen. Laws 1858, page 57) and for the foreclosure of the lien provided by said acts which, it
360 was alleged, existed upon a part of appellant's road. The balance thus sought to be recovered, as appeared from plaintiff's petition, was the balance of such indebtedness of said companies as fixed by and ascertained under the general act of August 13th, 1870, entitled "An act for the relief of railroad companies indebted to the State for loans from the special school fund" (Gen. Laws 1870, page 85). Trial of the case resulted in judgment, on February 29th, 1896, against appellant for $673,109.56, besides costs of suit, and a lien was declared upon appellant's entire line of railroad and property and its corporate rights and franchises, and was foreclosed, and said property was ordered to be sold to satisfy said judgment. On appeal therefrom, duly taken by this appellant, to the court of civil appeals for the third supreme judicial district, the latter court, on the 9th day of June, 1897, reformed the judgment of the district court so as to foreclose a lien upon that part of appellant's road which was in existence on August 13th, 1870, together with all other property in connection therewith mentioned in the judgment of the district court, such as depots, etc., together with the franchises of that part of said road, and ordering a sale thereof to satisfy the amount of the judgment of the district court, but without rendering any judgment against appellant individually or personally for the amount of said debt, except to sell its property above mentioned in satisfaction of said amount, and, as thus reformed, the said judgment was affirmed. Motion for rehearing, presenting all the grounds hereinafter stated in support of this application, was duly filed by appellant in the said court of civil appeals on the 23rd day of June, 1897, which was thereafter, on the 3rd day of November, 1897, overruled and denied. The general nature of the case as presented by the pleadings is sufficiently stated in the opinion of the court of civil appeals, but further statements as pertain to particular grounds of this
361 application will be made hereinafter at the appropriate places, and petitioner says that in the judgment and proceedings in said cause said court of civil appeals committed error in its rulings upon questions of law, the determination of which were necessary to the decision of said cause in the court of civil appeals and which are relied upon by petitioner as grounds for its application for a writ of error herein as follows, to wit:

First.

The said court of civil appeals erred in overruling and holding not well taken appellant's first assignment of error, complaining o the action and ruling of the court below in refusing appellant's ap

plication to remove this cause into the circuit court of the United States for the western district of Texas, and in holding that the court below was authorized to proceed with this cause after the presentation of the petition and bond for such removal.

Statement.

No Federal question was presented upon the face of plaintiff's original petition (Trans., 1–7); but by plaintiff's first supplemental petition (Trans., 41–50) such question was presented in various forms. The very first exception to defendant's answer (after the general demurrer, which of course was not good) was, in effect, that the money sued for was a special fund granted by the Congress of the United States for special purposes, and that the legislature had no authority to lend or divert it. Another ground of the first special exception was that the treasury warrants used in making the payment in question were illegal and void because they were bills of credit emitted by the State, contrary to section 10, article 1, of the Constitution of the United States (Trans., 41, 42). The same constitutional question was again raised by special exception IV (Trans., 43) and by special pleas (Trans., 44–46). This supplemental petition was filed November 16th, 1895, and promptly,
362 indeed on the same day, appellant filed its application to remove the cause into the circuit court of the United States (Trans., 51–65). The petition for removal (Trans., 51–64) set forth the exceptions and pleas contained in plaintiff's first supplemental petition, as above referred to, showing that the case was one arising under the Constitution and laws of the United States, and showed also that the suit was of a civil nature; that the matter and amount in dispute therein exceeded, exclusive of interest and costs, the sum or value of $2,000, and referred to the bond accompanying the same, which was in form and conditioned as required by law (Trans., 64, 65). The court denied and refused such application to remove (Trans., 50, 51). Appellant duly excepted to the ruling, as shown by bill of exceptions No. 1 (Trans., 51–65) (Appellant's Brief, pages 19–24).

Second.

The said court of civil appeals erred in not deciding and holding that the payments in question were presumed to be legal until shown by the evidence to be otherwise, and in not deciding and holding that the burden was upon the State, as plaintiff, to plead and prove the illegality upon which it relied to avoid the payments in treasury warrants, and in not sustaining and holding well taken appellant's twenty-ninth, thirtieth, and thirty-first assignments of error, grouped and presented together, as involving substantially the same question in appellant's brief in said court, and which reads as follows:

"Twenty-ninth. The court erred in concluding and holding as matter of law that no presumption could arise or exist that the officers of the State of Texas, accepting the payments in question,

made in treasury warrants, accepted only such warrants as were issued in aid of the civil government."

"Thirtieth. The court erred in concluding and holding as
363 matter of law that the burden of proof was upon defendant to plead and prove the particular kind and character of warrants used in making the payments in question, or that defendant was required to do more than plead and prove the payment in such treasury warrants as were acceptable to and were in fact accepted by the comptroller of the State of Texas, who was by law authorized to receive the same as such payments."

"Thirty-first. The court erred in concluding and holding as matter of law that the burden of proof was on defendant to show that the treasury warrants used in making such payments were legal and valid or to show more than the fact that the warrants used in making such payments were accepted by the officers authorized to receive the same."

Statement.

See the fifth, sixth, and seventh conclusions of law filed by the trial court (Trans., 126, 127). There is an entire absence of anything in the record to show or indicate the character of the warrants used in making the payments in question, whether they were issued before or during the war, and if during the war whether for civil or military services, and nothing to indicate in any way the date or denomination of the warrants or when or the purposes for which they were issued. As far as the proof shows, they might have been issued before the war or for civil services during the war. The transcript from the books of the comptroller's office introduced in evidence showed the payments in warrants, as pleaded by appellant, were made and that they were acceptable by the comptroller, who was the officer designated by law to receive them, and that credit for such payments was duly given at the time upon the books of the State (Trans., 197, 202, 210, 211, 217, 218, 220) (Appellant's Brief, pp. 83–89 and printed arguments).

364 Third.

The said court of civil appeals erred in not deciding and holding that the trial court erred in admitting as evidence, over the objections of appellant, the message of Governor Davis to the twelfth legislature on August 6th, 1870, and extracts from the messages of November 15th, 1861, and February 5th, 1863, and November 5th, 1863, sent by Governor Lubbock to the legislature, and extracts from the messages of May 11th, 1864, and October 20th, 1864, sent by Governor Murrah to the legislature, and extracts from the recommendations of Comptroller Johns made in his annual report of November, 1861, and in not sustaining and holding well taken appellant's eighth, ninth, and sixteenth assignments of error, complaining of the rulings of the court below in admitting such evidence.

Statement.

The message of Governor Davis was a veto of an act for the relief of the Houston & Texas Central Railway Company and is set forth in the transcript, pages 241–247. To the introduction of this document counsel for defendant objected upon the grounds (1) that the same was irrelevant and not material to any issue in the case, and (2) that the conclusions, opinions, and arguments therein contained were not admissible as evidence of any fact material in the case, which objections were overruled, when counsel for defendant duly excepted (bill of exceptions No. 1; Trans., 136–137).

To the introduction of the extract from the report of C. R. Johns, comptroller (Trans., 260–262), counsel for defendant objected upon the grounds (1) that the same was irrelevant and immaterial to any issue in the case, (2) that the plaintiff could not in such manner show the purpose and intent of the legislature in enacting laws or the meaning of laws passed by the legislature, which was the purpose for which it was introduced, (3) that the same was
365 inadmissible as evidence of the intent and meaning of the acts passed by the legislature or for any other purpose, (4) that the same was not admissible as evidence of any of the facts as therein stated, (5) that it was not shown that the same referred to the kind or character of warrants used in making the payments in question and had not been connected by evidence with such warrants (bill of exceptions No. 17; Trans., 156–157).

The messages of Governors Lubboch and Murrah referred to occupy thirty-five pages of the typewritten record (Trans., 262–296). To each of these documents as offered counsel for defendant objected upon the grounds (1) that the same were irrelevant and immaterial to any issue in this case, (2) that the plaintiff could not in such manner show the purpose or intent of the legislature in enacting laws or the meaning of laws passed by the legislature, (3) that the same were inadmissible as evidence of the intent or meaning of the acts passed by the legislature or for any other purpose, (4) that the same were not admissible as evidence of the facts as therein stated, and (5) that it did not appear that the messages referred to the kind or character of warrants used in making the payments in question and had not been connected by evidence with such warrants (bills of exceptions Nos. 5, 6, 7, 9, and 10; Trans., 137–144). To each of the bills of exception taken to the introduction of the veto message of Governor Davis and of the messages of Governors Lubbock and Murrah and the report of Comptroller Johns the trial judge added the explanation that "the objectionable testimony was not considered in deciding the case," but did not state and the record does not show what he considered objectionable testimony (Appellant's Brief, pp. 38–41).

Fourth.

The said court of civil appeals erred in admitting, over
366 the objections of appellant, certified copies of certain statements and accounts in the office of the comptroller of public

accounts and of the State treasurer, as shown by appellant's tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth assignments of error.

Statement.

See Appellant's Brief, pp. 41–44. These statements are contained in the record at pages 248–258. To their introduction as evidence the defendant objected upon the grounds (1) that they were irrelevant and immaterial to any issue in the case, (2) that they were not competent evidence in behalf of the State of the contents of the books or of any entries of the books or the comptroller's public accounts or of the treasurer of the State, (3) that they purported to be merely a copy of statements prepared in 1864 by C. H. Randolph, then treasurer of the State, and were not competent evidence in behalf of the State of the facts they purported to show, (4) that they did not show the character of the treasury warrants therein mentioned, or that they were otherwise than legal and valid, and (5) that the statements or accounts contained in the books of the comptroller or treasurer or on file in their departments were not competent evidence in behalf of the State of the facts purported to be thus shown or recorded. These objections were overruled; to which ruling the defendant excepted (bills of exceptions Nos. 11, 12, 13, 14, 15, and 16; Trans., 145–156). In approving one of these bills of exceptions (No. 11) the trial judge explained that "the objectionable evidence was not considered as evidence in deciding the case, the case having been decided upon the unconstitutionality of the statutes involved and the lack of proof by defendant each as separate, conclusive, and independent grounds for *for* the decision" (Trans., 146). The other bills of exceptions referred to were approved by him, with the explanation that "no finding of fact has been made in favor of the State upon the issues upon which
367 this evidence was introduced" (Trans., 148–158).

Fifth.

The said court of civil appeals erred in not sustaining and holding well taken appellant's eighteenth and nineteenth assignments of error, complaining of the action and ruling of the trial court in admitting, over the objections of appellant, the treasury warrants taken from the basement of the comptroller's office and introduced in evidence in connection with the testimony of plaintiff's witnesses, W. C. McCall and G. A. Proctor.

Statement.

The witnesses referred to, McCall and Proctor, testified in effect that they were employés of the comptroller's department and had been, at the instance of the attorney general, required by the comptroller to search for evidence of the character of the warrants in which the payments in question were made; that they had been unable to find any data or memoranda of any kind showing the kind or character of warrants used in making such pay-

ments; also that there was a large number of old warrants, purporting to have been issued during the war, in the basement of the comptroller's office without any endorsement or writing on them to indicate and the witnesses were unable to find any data or memoranda to indicate by whom and for what purpose or on what account such warrants were received or from whom they were received; that they had not examined all the warrants in the basement, but at the request of the attorney general, representing the plaintiff in the case, they had taken from the lot a number, which the witnesses then produced and identified as those taken by them from the basement of the comptroller's office shortly before the trial. It was these warrants thus secured and produced that were offered, to which objection was made (Trans., 301–
368 309). The witnesses further testified that they did not examine all the cancelled warrants in the basement of the comptroller's office; that they did not know whether the warrants in the basement were all the warrants that were cancelled during the war or not, and that there was nothing there, as far as the witnesses knew, to show from what source the warrants so offered in evidence were received by the comptroller and treasurer (Trans., 305. 308, 309). To the introduction of such warrants the defendant objected upon the grounds (1) that the same were irrelevant and immaterial to any issue in the case, (2) that it was not shown that they were the warrants or similar in kind and character as the warrants used in making the payments in question, (3) that it appeared that the warrants so offered were selected by plaintiff's witnesses from a mass of other warrants, the character of which *were* not shown, and (4) that said warrants were not competent evidence to show all the kind and character of warrants issued at different times and for different purposes and for different amounts during the war (bills of exceptions Nos. 19 and 20; Trans., 159–163). In approving the bills of exceptions the trial judge added the explanation that "the objectionable evidence was not considered in deciding the case," but did not specify what he considered objectionable evidence. All the warrants sent up as original documents with the record in this cause are a part of the warrants thus introduced. (See Appellant's Brief, pp. 44–47.)

Sixth.

The said court of civil appeals erred in not sustaining and holding well taken appellant's twentieth assignment of error, complaining of the action of the court below in excluding upon the objection of plaintiff cross-interrogatory No. 2 propounded to and the answer thereto by E. W. Cave, whose depositions were taken by plaintiff.

369 *Statement.*

The interrogatories and answers excluded were as follows:

"Cross-interrogatory 2. Please state, if you know, whether there was, on the 18th day of January, 1861, outstanding and then unpaid bonds and treasury warrants of the State of Texas theretofore

executed, issued, and delivered by said State, and whether there were any such bonds and warrants issued prior to the 18th day of January, 1861, and outstanding and unpaid on the 18th day of March, 1861, the 1st day of February, 1861, and during the years 1863, 1864, and 1865."

Answer to cross-interrogatory No. 2. "My recollection is that in January, 1861, and February and March, 1861, there was outstanding and unpaid a large amount of the State bonds and treasury warrants of the State of Texas previously issued, and that a large indebtedness existed at those times, for which State treasury warrants had not been then issued. The heavy drain upon the revenues of Texas for the defense of the frontier against Indians and from incursions from Mexico depleted the treasury, and State treasury warrants were issued and outstanding and unpaid, as stated, in March, 1861, and State treasury warrants were afterwards, during the war, issued to cover indebtedness and appropriations existing prior to March, 1861. I cannot speak as to the bonded indebtedness existing. I do not know what payment was made of such treasury warrants by the State of Texas. My recollection is that they were also made receivable for State taxes and State dues and for sale of the public lands" (Trans., 164–165).

The attorney general objected to this evidence upon the ground that the books and records of the treasurer's office were the best evidence of the amount of such warrants outstanding and unpaid at the times inquired about; that said question and answer were not competent evidence of such facts. (See defendant's bill
370 of exeption No. 21; Trans., 164–165.) In approving this bill of exceptions the trial judge added the explanation "that the court took judicial notice of the fact that large appropriations were made for debts incurred prior to the war, against which warrants were issued, and that all of these had been paid when defendant acquired warrants to make the payments in question" (Trans., 165). The depositions of this witness further show (Trans., 315) that he was secretary of state of the State of Texas during the administration of Governor Houston, beginning in December, 1859, and it is a fact shown by the history of the State that he was deposed from that office with Governor Houston by the secession convention in 1861 (Appellant's Brief, 47–50).

Seventh.

The said court of civil appeals erred in finding and holding that such payments as were made by appellant in treasury warrants were with treasury warrants issued after January 1st, 1862, and intended by certain acts of the legislature to circulate as money, because said finding and decision is without any evidence whatever to suppport it and is, moreover, against the presumption indulged, in the absence of proof to the contrary, that the warrants used were legal and that the transaction was in all respects lawful, and in refusing to sustain and hold as well taken appellant's twenty-seventh, forty-second, and forty-third assignments of error, grouped and presented together in appel-

lant's brief and motion for rehearing, which in effect complained of the finding and conclusion of the district court that the acts of the legislature authorizing the payments in question in treasury warrants were passed in aid of legislation intended to cause such warrants to circulate as money and as bills of credit, and that the warrants in which such payments were made were issued with the intention that they should circulate as money, contrary to the constitution of the State, and were bills of credit emitted
371 contrary to the Constitution of the United States, and that for such reasons they were illegal and the laws authorizing their payment were invalid, when there was no evidence whatever to support or sustain such finding or that said acts were illegal or to show that any of the warrants were other than legal and valid warrants drawn by the comptroller in the usual course of business upon the treasurer of the State to pay appropriations theretofore duly made by the legislature for the support of the State government.

Statement.

Appellant's twenty-seventh, forty-second, and forty-third assignments of error, referred to in the above ground, are as follows:

"Twenty-seventh. The court erred in finding and concluding that the acts of the legislature of the State of Texas authorizing the payments in question in treasury warrants were passed in aid of legislation intended to cause State treasury warrants to be issued to circulate as money and with a view of stimulating their circulation as money, and were for that reason void, because there was no evidence whatever to support and the evidence is insufficient to sustain such finding, and there was nothing upon the face of said acts indicating that they were passed for any such purpose.

Forty-second. The court erred in denying defendant credit for and holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant on the ground that the laws authorizing such payments to be made in treasury warrants were passed in aid of legislation intended to cause State treasury warrants to be issued to circulate as money, contrary to the constitution of the State, and as bills of credit, contrary to the
372 Constitution of the United States, and for those reasons were void, when there was no evidence whatever to support or sufficient to sustain such finding and when there was nothing upon the face of said laws to indicate that they were passed for any such purpose or were for any reason invalid.

Forty-third. The court erred in denying defendant credit for and holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant on the ground that such treasury warrants were issued with the intention that they should circulate as money, contrary to the constitution of the State, and as bills of credit, contrary to the Constitution of the United States, and were for those reasons illegal, when there was no

evidence to support or sustain such finding and judgment or to show that any of the warrants were other than legal and valid warrants drawn by the comptroller in the usual course of business upon the treasurer of the State to pay appropriations theretofore duly made by the legislature of the State for the support of the State government, by which means alone money could be drawn from the treasury of the State." (See Appellant's Brief, 70–80, and printed arguments.)

The evidence wholly fails to show when or for what purpose the warrants used in making the payments in question were issued or the character of the warrants in any respect, whether they were issued before or during the war, and if during the war whether for civil or military services, and nothing to indicate in any way their form or denomination. The transcript from the books of the comptroller's office introduced in evidence by appellant showed the payments as pleaded by it, and that they were in treasury warrants acceptable to and which were in fact accepted by the comptroller, who was the officer designated by law to receive them, and that credit for such payments was duly given at the time
373 upon the books of the State (Trans., 192, 202, 210, 211, 217, 218, 220). There is no evidence whatever in the record to show that the warrants so paid in were other than legal and valid warrants and nothing to sustain the finding now complained of. There is an entire failure of proof upon the part of the State to show that the warrants used in making the payments were illegal, and which is the ground upon which it sought to avoid the credits that have been given for such payments.

The district judge himself found that it had "not been proved whether the warrants actually used in making the payments were warrants issued for indebtedness incurred prior to the civil war or warrants issued for State indebtedness incurred after the war began, or, if the latter class, whether they were warrants issued for military purposes or for civil indebtedness, etc." (3rd finding of fact; Trans., 124).

There is absolutely no conflict in the evidence upon this or any other point in the case. While the statement of facts occupies a large part of the record, it consists chiefly of documents (most of which under our view were inadmissible) and documentary evidence, and the only material facts established are as follows (Appellant's Brief, 11–19):

1st. It was admitted by the defendant that the State of Texas made to the Houston & Texas Central Railway Company and to the Washington County Railroad Company, respectively, under the provisions of an act entitled "An act to provide for the investment of the special school fund in the bonds of railroads incorporated by the State," approved August 13, 1856, loans in the amounts and at the dates set forth in the plaintiff's original petition, and that said companies executed and delivered to the State of Texas on the dates and in the amounts set forth in said petition the bonds described therein in consideration of said loans (Trans., 167).

374 2nd. It was also admitted that on or before the 15th day of August, 1870, the Washington County railroad became consolidated with and merged into the Houston & Texas Central railway, and that said Houston and Texas Central Railway Company thereafter had possession of and claimed the property which had theretofore belonged to the Washington County Railroad Company (Trans., 167).

3rd. It was shown that appellant, The Houston and Texas Central Railroad Company, was incorporated under the general laws of the State of Texas, and more especially under the laws of March 29th, 1889 (Revised Statutes 1895, article 4550), by the filing of articles of incorporation in the office of the secretary of state on the first day of August, 1889, by F. P. Olcott and his associates, the purchaser of the railroad and the corporate rights and franchises of the Houston and Texas Central Railway Company, including the Washington County railroad, at judicial sale thereof (Trans. 167, 174).

4th. It was admitted that appellant, having been organized and existing under and by virtue of the articles of incorporation filed, as aforesaid, at the trial and at the time of the institution of this suit, was in possession and claimed, under proper deeds of conveyance from said F. P. Olcott and under such articles of incorporation, to own and operate the railroad and property described in plaintiff's original petition (Trans., 174, 175).

5th. It was admitted that all payments made on acoount of the loan to the Washington County Railroad Company described in plaintiff's petition after that company was merged into the Houston and Texas Central Railway Company, in 1870, up to May 1st, 1879, when such payments were discontinued, were made by the Houston and Texas Central Railway Company, and that all payments on account of the loan described in plaintiff's petition to the Houston & Texas Central Railway Company prior to February, 1885, were made by that company, and from February, 1885, to April,
375 1893, were made by the receivers of that company, and that the payment made subsequent to April 1st, 1893, was made by appellant (Trans., 175).

6th. Each and all the payments on account of the loans and indebtedness described in plaintiff's petition to the Houston & Texas Central Railway Company and to the Washington County Railroad Company, respectively, pleaded in appellant's first amended original answer (Trans., 8–40), were shown to have been made as therein alleged, including the payments made in treasury warrants (Trans., 197–227).

7th. It was shown that the payments made by said companies in treasury warrants, as pleaded by them, were accepted by the comptroller and treasurer of the State, and that credit therefor was at the time duly given by the comptroller on the books of his department (Trans., 200, 210, 211, 218–220).

8th. It was shown that the aggregate amount due by the Houston & Texas Central Railway Company, as said aggregate amount stood on the first day of May, A. D. 1870, on the books of the

State of Texas, on account of the loans described in plaintiff's petition was the balance remaining after allowing said company credit for all amounts theretofore paid by it thereon, as pleaded in defendant's first amended original answer, including the amounts paid, as therein alleged, in State treasury warrants, to wit, $551,550.00 instead of $657,324.35, as alleged in plaintiff's petition, and that the aggregate amount due by the Washington County Railroad Company, as said aggregate amount stood on the first day of May, A. D. 1870, on the books of the State of Texas, on account of the loans described in plaintiff's petition was the balance remaining after allowing said company credit for all amounts theretofore paid by it thereon, as pleaded in defendant's first amended original answer, including the amounts paid, as therein alleged, in State treasury warrants, to wit, $48,497.57 instead of $103,840.01,
376 as alleged in plaintiff's petition.

9th. It was shown that by allowing credit for the paymenst made in treasury warrants, as pleaded in appellant's first amended original answer and shown to have been made as there alleged, as well as for the other payments therein pleaded, the entire indebtedness declared on in plaintiff's original petition was satisfied and discharged, but that, disregarding such payments in treasury warrants and disallowing credit therefor, there would be due plaintiff, The State of Texas, the amount claimed to be due as the balance of such indebtedness, as alleged in plaintiff's original petition.

10th. The payments required to be made on account of the indebtedness due by railroad companies to the State for loan of the special school fund that were required to be made by section 1 of the act approved August 13th, entitled "An act for the relief of railroad companies indebted to the State for loans from the special school fund" (Gen. Laws 1870, page 85), were required by the comptroller and governor of the State to be made by the Houston and Texas Central Railway Company on account of its indebtedness and that of the Washington County Railroad Company without regard to the payments aforesaid made on such indebtedness in treasury warrants and as if no such payments had been made and on a basis of such indebtedness without allowing any credit for such payments. Each of the payments so exacted was made under protest, and notice of each in writing was filed with the comptroller at the time of each payment (Trans., 288, 229).

11th. The passage of the special act of the legislature of the State of Texas entitled "An act for the relief of the Houston and Texas Central Railway Company," passed August 15th, 1870, was shown (Trans., 175–196), which, among other things, merged the Washington County railroad into and made it a part of the
377 Houston and Texas Central Railway Company and placed it under the management and control of the Houston and Texas Central Railway Company in like manner as every other part of its railway, and provided for the exchange of the bonds given by the Houston and Texas Central Railway Company and the Wash-

ington County Railroad Company to the State for the loans of the special school fund made to said companies for the bonds of the Houston and Texas Central Railway Company, secured by deed of trust dated July 1st, 1866, to Shepherd Knapp and David S. Dodge, as trustees, and provided that in such exchange the Houston and Texas Central Railway Company should be allowed credit for the sums paid in the treasury warrants of the State during he years 1864 and 1865 by said company and by the Washington County Railroad Company, amounting in the aggregate to $152,864.55.

12th. It was agreed and admitted by both parties that the Washington County Railroad Company was merged into the Houston and Texas Central Railway Company in 1870, and was operated by the latter company until its property and affairs passed into the hands of receivers in February, 1885, and was operated by such receivers until April 10th, 1893, and passed with the other lines of the Houston & Texas Central Railway Company to Frederic P. Olcott by foreclosure sale in 1888, and from Olcott to appellant, organized, as aforesaid, under articles of incorporation filed August 1st, 1889, in the office of the secretary of state (Trans., 229).

13th. It was shown that the Washington County Railroad Company had no offices and no officers upon — service could be had, and had no actual existence as a corporation (Trans., 230).

14th. It was shown that the six per cent. bonds of the State issued by the comptroller and treasurer under the provisions of the aforesaid acts of December 16th, 1863, May 28th and November 15th, 1864, to and for the benefit of the special school fund for the amounts paid under said acts by railroad companies on
378 account of their indebtedness to said special school fund were paid, principal and interest, to the school fund in August, 1883, in pursuance of an act of the legislature approved February 15th, 1883 (Trans., 315, 316).

15th. It was shown that there was at the time of the trial, in the basement of the comptroller's office, in the capitol building at Austin, a large number of canceled warrants purporting to have been issued during the war, some for civil service and others for military service, but there was nothing whatever on them or on the records of the comptroller's office to indicate and no evidence was offered to show in any way how they came into the custody of the comptroller or when or from whom or for what purpose they were received at the comptroller's office (Trans., 301–309).

16th. It was shown that there was nothing on the books or the records of the comptroller's department of the State showing the date, denomination, or character of any of the treasury warrants paid in by the Houston and Texas Central Railway Company and the Washington County Railroad Company used by them in making the payments shown to have been made by them in State treasury warrants on account of the loans described in plaintiff's original petition, and nothing to show whether such warrants were issued before or after the commencement of the war in 1861, or if after that time whether they were issued for civil or military purposes (Trans., 301–309).

17th. It was shown that there was nothing upon any of the books or records of appellant or upon any of the records or books of the Houston and Texas Central Railway Company or the Washington County Railroad Company to show the date, denomination, or character of the warrants paid in by said railway company and used by them in making the payments shown to have been made by them in treasury warrants on the loans described in plaintiff's petition, and nothing to show *either* such warrants were issued
379 before or after the commencement of the war in 1861, or if issued after that time whether for civil or military purposes; and it was further shown that appellant, though making diligent effort, had been unable to secure such information or to find any person having knowledge of the kind and character of warrants used in making such payments, and also that appellant had been unable to find any person who was connected with the railway now owned by it at the time such payments were made (Trans., 309–315).

18th. It was also shown that C. H. Randolph, State treasurer during the war, and C. R. Johns, comptroller during that period, Morgan C. Hamilton, comptroller during the reconstruction period, and that ex-Governors Throckmorton, Hamilton, Davis, and Pease were dead. Johns died about ten years ago (1886); Morgan C. Hamilton died in 1895; ex-Treasurer Randolph died in 1889 or 1890; ex-Governor Throckmorton died about two years ago; ex-Governor Davis died about 1885, and ex-Governor Pease died some time subsequent to 1888, but prior to the institution of this suit (Trans., 309, 310).

Large appropriations were made just before the commencement of the war and during the war for the ordinary expenses of the civil government of the State, which the State was without means to pay. The legislature which convened on November 7th, 1859, and adjourned February 13th, 1860, appropriated for the support of the State government during the years 1860 and 1861 and for other lawful purposes $1,169,082.08 (Laws First Reg. Ses. 8th Leg., pages 1, 9, 11, 18, 20, 21, 30, 35, 36, 37, 38, 59, 79, 86, 102, 112, and 119). The extra session of the 8th legislature, which convened January 21st, 1861, and adjourned April 9th, 1861, appropriated for lawful purposes, including the defense of the frontier for the year 1860, and to meet deficiencies in former appropriations, $311,594.50 (Gen. Laws Extra Ses. 8th Leg., pages 1, 8, 17, 32, 44, 53). The
380 first regular session of the ninth legislature, which convened November 4th, 1861, and adjourned January 14th, 1862, made appropriations for the support of the civil government and for other lawful purposes, aggregating $693,252.90 (Gen. Laws First Reg. Session Ninth Leg., pages 3, 7, 31, 44, 47, 55, 56). The first extra session of the ninth legislature, which convened February 2nd, 1863, and adjourned March 6th, 1863, made appropriations for lawful purposes aggregating $293,295.60 (Gen. Laws Ex. Ses. 9th Leg., pages 7, 11, 28, and 31). It is a historical fact that the treasury of the State was practically empty at the beginning of the war, and that the revenues of the State were totally inadequate to meet the ordinary expenses of the civil government of the State during the war, and,

indeed, were practically suspended for that period. Governor Houston convened the legislature in special session on January 21st, 1861, because of the condition of the State's finances, and to provide for the large indebtedness of the State, especially that incurred for defense of the frontier against Indians. (See his message of that date.)

As already pointed out under previous grounds of this petition, the treasury warrants sent up with the record as original documents were taken from the basement of the comptroller's office during the trial in the court below by the witnesses McCall and Proctor from a mass of old warrants stored there, and no one pretends that they were warrants or a part of warrants used in making the payments in question, and there is nothing whatever to show that they are the same as or similar to the warrants used in making such payments, either in form, color, size, date, or denomination.

It is to be observed that the court of civil appeals does not find that the warrants were drawn otherwise than to pay appropriations made by the legislature for lawful purposes, and, indeed, there is no evidence whatever showing that they were drawn for any
381 other purpose than the payment of appropriations duly made by the legislature for lawful purposes.

Eighth.

The said court of civil appeals erred in holding and deciding that appellant was not entitled to credit for the payments made in treasury warrants, even if such payments were made in warrants intended to be circulated as money, when it appeared that such warrants were drawn by the comptroller upon the treasury in obedience to law to pay appropriations duly made by the legislature, and evidenced valid indebtedness of the State which was thereby extinguished, and when it appears that the transaction was regarded as legal by all parties when made, and is and long has been fully executed, and when it appears from the undisputed evidence that if such warrants and the transactions in which the payments were made were illegal, the State was a party thereto and was the wrong-doer, if there was wrong, and is therefore *in pari delicto*, and, the transaction being fully executed, the State is bound by it, and erred in not sustaining and in overruling appellant's third, fourth, thirty-second, thirty-third, forty-fourth, forty-fifth, and forty-sixth assignments of error (copied in statement below), which complained in effect of the judgment of the court below in its rulings on the pleadings, in its findings of fact, and in its conclusions of law to the effect substantially that the State was not bound by its acceptance of the payments in warrants and the credits therefor given upon its books to the railroad companies making such payments and could repudiate such payments and was not bound by its acts and the acts of its officers in the premises, and is not *in pari delicto* with respect to such transaction, although the uncontradicted evidence shows
382 that the warrants were drawn by the comptroller upon the treasurer in obedience to laws in force since the State was

created to pay appropriations duly made by the legislature, were accepted by the railroad companies at the instance of the State at par with specie for the payment of freight and passenger fares under promises on the part of the State to accept them as such payments, were accepted by the comptroller, who was the officer designated by law to receive them and who gave at the time due credit therefor, and when the undisputed evidence further showed that if there was any illegality in the warrants or any wrong whatever in the transaction the State was the wrong-doer throughout, and is therefore *in pari delicto*, and, the transaction being fully executed, the State is not entitled to relief against it.

Statement.

The assignments of error to the rulings of the court below, referred to in the above ground, and which we here copy for the convenience of the court, are as follows:

"Third. The court erred in overruling defendant's II demurrer, as contained in its first supplemental answer to the first special plea contained in plaintiff's first amended supplemental petition, and to so much of said supplemental petition as alleged in effect that the treasury warrants therein referred to were void, because issued in violation of the provision of the constitution of the State of Texas prohibiting the issuance of treasury warrants intended to circulate as money, and were bills of credit emitted by the State in contravention to the provisions of section 10, article 1, of the Constitution of the United States, which demurrer was upon the ground that— said warrants were issued in violation of the constitution of Texas and of the United States, as alleged, it appeared from said supplemental petition that they were so issued by plaintiff and by it put
383 in circulation among its citizens, and having been so issued and put in circulation, and after having contracted and agreed with the defendant to receive the same as such payment, plaintiff, The State of Texas, accepted and received the treasury warrants so paid in without protest or objection, and the transaction having been completed many years ago and being fully executed, plaintiff, being the wrong-doer, if there was wrong, and *in pari delicto*, was not entitled to have the same reopened and set aside in order that it might take advantage of its own wrong, and was estopped to question or deny the validity of the transaction in this action instituted in its own behalf, and, having received and accepted said warrants as such payment without protest or objection, it could not now repudiate its action."

"Fourth. The court erred in overruling defendant's III demurrer, as contained in its first supplemental answer to the second special plea contained in plaintiff's first amended supplemental petition, and to so much of said supplemental petition as alleged in effect that defendant should not be allowed credit for payments made in treasury warrants, and that such treasury warrants were illegal, because it was alleged that they were issued in aid of the rebellion, which demurrer was upon the ground, substantially, that if the warrants used in making the payments in question were issued in

aid of the so-called rebellion, as alleged, it appeared from said supplemental petition that they were issued by plaintiff and by it put in circulation among its citizens, and having been so issued and put in circulation, and after having contracted and agreed with defendant to receive the same as such payment, plaintiff, The State of Texas, accepted and received the treasury warrants so paid in without protest or objection, and the transaction having been completed many years ago and being fully executed, plaintiff, being the wrongdoer, if there was wrong, and *in pari delicto*, was not entitled to have the same reopened and set aside in order that it might
384 take advantage of its own wrong and was estopped to question or deny the validity of the transaction in this action instituted in its own behalf, and, having received and accepted said warrants as such payment without protest or objection, it could not now repudiate its action.

"Thirty-second. The court erred in finding and concluding that the legislature of the State of Texas and all the officers of said State were acting outside of their authority to represent the State, and that they alone and not the State of Texas were *in pari delicto* in authorizing and receiving such payments and in subsequently ratifying the same.

"Thirty-third. The court erred in holding that the payments in question did not constitute an executed matter, upon the ground that nothing was executed or accomplished by said payments, but that they were void and did not amount to payments in law, and that they were not received by the State's officers, because there is no evidence to support and the evidence is insufficient to sustain such finding, and the same is erroneous."

"Forty-fourth. The court erred in rendering judgment against defendant when the undisputed evidence showed that the indebtedness declared on in plaintiff's petition had been fully paid off and satisfied, upon the ground that the payments thereon shown to have been made in State treasury warrants were invalid, or that defendant was not entitled to credit therefor, when it appeared from the undisputed evidence that if the treasury warrants used in making the payments were issued in aid of the rebellion, or were issued to circulate as money, contrary to the constitution of the State, or were bills of credit emitted contrary to the Constitution of the United States, they were so issued by the State of Texas, and were by it accepted without protest or objection and willingly as valid and lawful payments, and the transaction was fully executed, and
385 that the State of Texas was *in pari delicto*, if there was wrong in the transaction.

"Forty-fifth. The court erred in finding and holding that defendant was not entitled to credit for the amount shown to have been paid on account of the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant, when at the time such payments were made there were valid laws of the State of Texas in force authorizing such payments to be made in treasury warrants on the condition in effect that the comptroller should be satisfied that the com-

pany making such payments had accepted such warrants at par with specie for freight and passenger fares upon its railroad, and when the undisputed evidence showed that the comptroller, being so satisfied, had accepted said warrants as such payments, and at the time gave due credit therefor, when there was no evidence whatever to show that the warrants so used in making such payments were illegal or invalid, or other than legal and valid warrants issued before or during the war in the usual course of business, or appropriations duly made for the support of the civil government of the State, or for other lawful purposes, and when there was no evidence whatever of any illegality in the transaction with respect to the kind and character of warrants used, or the action of the company in making such payments, or otherwise, and when said payments were received and accepted without protest or objection at the time, and were acknowledged to be and treated as valid by the government of the State of Texas at that time, and frequently afterward, and when the transaction was and had been for a great number of years fully executed and completed, and when it appeared that if said warrants were illegal, or if there was any illegality whatever in the transaction, plaintiff was the wrong-doer, and was *in pari delicto* and was not entitled to relief against the same.

386 "Forty-sixth. The court erred in rendering judgment against defendant when the uncontradicted evidence showed that the indebtedness declared on in plaintiff's petition had been fully paid and satisfied and ceased to exist, upon the ground that the payments on said indebtedness made in treasury warrants, as shown by the evidence, were invalid, or that defendant was not entitled to credit therefor, when it appeared that at the time such payments were made there were valid laws of the State of Texas in force authorizing such payments in such warrants upon the conditions specified in such laws, which conditions the undisputed evidence showed were fully complied with." (See also Appellant's Brief, 26 to 33, 89 to 91, and 103 to 112, and printed arguments).

The demurrers, the overruling of which is complained of in the second and third assignment of error above quoted, are contained in defendant's first supplemental answer (Trans., 75–80) and were addressed to that part of plaintiff's first amended supplemental petition setting up that the payments in question made in treasury warrants were illegal and denying on that ground that the defendant was entitled to credit therefor and seeking on such ground to avoid the payments pleaded by defendant (Trans., 66–74).

The conclusions of the trial court questioned by the thirty-second and thirty-third assignments of errors above quoted were as follows (Trans., 127):

"8. I find that it is not the State, but State officers acting outside of their authority to represent the State, who are *in pari delicto* and who have ratified what has been done, if any ratification has taken place."

"9. I hold that the payments in question did not constitute an executed matter. Nothing was executed or accomplished by said payments, as they were void and did not amount to payments in law

neither were they received as payments by the State. They
387 were unlawfully received by State officers, who did not and could not represent or bind the State in this matter."

The acts authorizing the payments to be made in warrants were (1) the act of February 9th, 1861, entitled "An act authorizing treasury warrants to be received in payment of certain dues" (Gen. Laws 8th Leg., Extra Ses., page 19); (2) the act approved December 16th, 1863, entitled "An act authorizing the comptroller of the State to receive from railroad companies in this State the interest that may now be due on their bonds" (Gen. Laws 10th Leg., page 37); (3) the act approved May 28th, 1864, entitled "An act amending an act authorizing the comptroller of the State to receive from railroad companies in this State the interest that may now be due or hereafter become due on their bonds" (Gen. Laws. 10th Leg., Called Session, page 9); (4) and the act approved November 16th, 1864, entitled "An act to authorize railroad companies to discharge their indebtedness to the special school fund with the treasury warrants and bonds and coupons of the State" (Gen. Laws 1864, 2nd Extra Session, page 14).

The transcript from the books of the comptroller's office introduced in evidence by defendant (Trans., 197, 202, 210, 211, 217, 218, 220) showed the payments in warrants as pleaded by defendant were made, and that they were in warrants of a character acceptable to the comptroller, the officer designated by law to receive them, and that credit for such payments were duly given upon the books of the State.

It is to be observed that the court of civil appeals does not find that the warrants were not drawn to pay appropriations made by the legislature for lawful purposes, and, indeed, there is no evidence whatever showing that they were drawn for any other purpose than the payment of appropriations duly made by the legislature
388 for lawful purposes.

For further statement in support of this ground we refer to the statement of the only facts established by the evidence under the seventh ground of this application.

Ninth.

The said court of civil appeals erred in holding and deciding that the acts authorizing the payments in warrants now in question were unconstitutional when there is nothing upon the face or in the terms of any of said acts to show the same to be in any respect in conflict with the constitution or to show an unlawful purpose upon the part of the legislature in enacting the same, and erred in looking to other legislation enacted during the war period and in indulging in inferences of fact as reasons for holding such acts unconstitutional instead of determining the constitutionality of such acts by their own terms.

Statement.

See twenty-ninth, thirtieth, and thirty-seventh grounds of appellant's motion for rehearing. The acts authorizing payments to be made in treasury warrants are as follows:

"An act authorizing treasury warrants to be received in payment of certain dues.

SECTION 1. Be it enacted by the legislature of the State of Texas, That the comptroller and treasurer shall receive treasury warrants for money in settlement with any individual indebted to the State, for lands under the different pre-emption laws, or laws authorizing the sale of university lands, or laws providing for the sale of the public domain. Provided, that the comptroller and treasurer shall transfer to the credit of the university and common-school fund, such warrants as may be received in payment for lands appropriated for the university and for common schools, respectively
389 which said warrants shall be paid out of any money in the treasury not necessary to pay other appropriations.

SEC. 2. The board of school commissioners are hereby authorized to receive treasury warrants in payments of the two per cent. for a sinking fund, payable by railroad companies in whose bonds the special school fund has been, or may hereafter be invested; and said warrants shall be held for the credit of said special school fund in like manner as provided by law for the investment of said sinking fund in State stocks.

SEC. 3. Where treasury warrants are tendered under the provisions of this act in payment of any indebtedness, the interest shall be computed and allowed, and when the warrants exceed the indebtedness, the holder shall be entitled to a warrant for the residue.

SEC. 4. That all laws and parts of laws conflicting with the provisions of this act, be and the same are hereby repealed; and that this act take effect and be in force from and after its passage.

Approved February 9, 1861."
(Page 19, Gen. Laws Extra Session 8th Legislature.)

"An act authorizing the comptroller of the State to receive from railroad companies in this State the interest that may be now due or hereafter become due on their bonds.

SECTION 1. Be it enacted by the legislature of the State of Texas, That the comptroller of the State be, and he is hereby authorized to receive from the railroad companies in this State, who are indebted to the special school fund, all interest on their bonds that may now be or hereafter become due; provided, the same is tendered in
390 State bonds, or in State treasury warrants, previous to the meeting of the next regular session of the State legislature.

SEC. 2. That for all sums so paid in, the comptroller and treasurer shall issue to the special school fund the bonds of the State, bearing six per cent. interest.

SEC. 3. This act take effect from its passage.
Approved December 16th, 1863."
(Page 37, Gen. Laws Reg. Ses. 10th Legislature.)

"An act amending 'An act authorizing the comptroller of the State to receive from railroad companies in this State the interest that may now be due or hereafter become due on their bonds.'

SECTION 1. Be it enacted by the legislature of the State of Texas, That the provisions of the act, of which this is amendatory, shall not apply to railroad companies that fail or refuse to receive State bonds or State treasury warrants at par for freight or passage, at the prices or rates established by law.

SEC. 2. That whenever satisfactory evidence is produced or furnished to the State that any railroad company has failed or refused to receive the State bonds or State treasury warrants at par for freight or passage, at the rates established by law, he is required to refuse to receive the State bonds or treasury warrants for the interest due by said railroad upon its bonds.

SEC. 3. That the president of any railroad in this State be, and he is hereby required to post in a conspicuous place in the railroad offices, and in the passenger cars, the provisions and terms of this act, under a penalty of one hundred dollars, to be recovered for the benefit of the State, by suit before any court of competent jurisdiction upon the information of any party.

SEC. 4. That all laws or parts of laws conflicting with this act, be, and the same are hereby repealed, and that this act take effect from and after its passage.
Approved May 28th, 1864."
(Gen. Laws, Called Session, 10th Legislature, pages 9, 10.)

391 "An act to authorize railroad companies to discharge their indebtedness to the special school fund with the treasury warrants and bonds and coupons of the State.

Be it enacted by the legislature of the State of Texas, That the railroad companies of this State that are indebted to the special school fund, shall continue to be allowed the privilege of paying the interest due said fund in the treasury warrants and bonds and coupons of the State; and may also discharge the whole or any part of the principal of their indebtedness to that fund (in the same manner) provided such railroad companies shall satisfy the comptroller that the treasury warrants and bonds and coupons of the State are received by them at par with specie for freight and passenger travel.

That all treasury warrants and bonds and coupons of the State so received into the State treasury, shall be cancelled; and the comptroller shall issue the bonds of the State, bearing six per cent interest, to the special school fund for the amounts so paid in; and this act take effect from its passage.
Approved November 15th, 1864."
(Gen. Laws, 2nd Extra Session, 10th Legislature, page 14.)

It appears from their opinion that the court of civil appeals considered "the various acts of the legislature of the State during the period of the war concerning the State revenues, its indebtedness and liabilities, and providing for the issuance of State warrants and the purpose for which they could be used and the amount for which they could be used, together with the size, shape, and color of the warrants issued and the small amounts in which warrants were issued, together with the history of the times and the well-known depleted condition of the State treasury during that period, together with the scarcity of existing reliable and available circulating medium" and other circumstances inferred by them and indicated in their opinion, as reasons for holding the above acts unconstitutional.

392 Tenth.

The said court of civil appeals erred in considering "the various acts of the legislature of the State during the period of the war concerning the Stat- revenues, its indebtedness and liabilities, and providing for the issuance of State warrants and the purpose for which they could be used and the amounts for which they could be used * * * and the well-known depleted condition of the treasury during that period, together with the scarcity of an existing reliable and available circulating medium as money," as reasons and grounds for holding that the warrants used in making the payments in question were illegal or for any other purpose, as such matters were not evidence, and as there was no evidence whatever to show that the warrants used in making such payments were issued under such laws or under such circumstances or when or for what purpose they were issued, further than that they were of a character acceptable to the comptroller, who was the officer designated by law to receive them and who did receive and allow credit for them.

Statement.

See the twenty-seventh, twenty-ninth, and thirtieth grounds of appellant's motion for rehearing and pages fifteen and sixteen of the opinion of the court of civil appeals.

Eleventh.

The said court of civil appeals erred in considering and basing its judgment in part upon the size, shape, and color of the warrants issued and the small amount in which the warrants were issued, because there is absolutely no evidence in the record showing the "size, shape, and color or denomination of the warrants" used in making the payments in question, and, so far as the record shows, they may have been the same in such respects as are usually issued at this time.

393 *Statement.*

See twenty-eighth ground of appellant's motion for rehearing.

Twelfth.

The said court of civil appeals erred in considering and basing its judgment upon matters and supposed facts not found by it or set forth in its opinions or findings and in not finding and stating all the facts upon which it based its conclusion.

Statement.

See thirty-first ground of appellant's motion for rehearing.

Thirteenth.

The court of civil appeals erred in not deciding and holding that the acts of the legislature of the State of Texas approved February 9th, 1861, December 16th, 1863, May 28th, 1864, and November 16th, 1864, pleaded by appellant in its answer in the court below and quoted in the statement under the ninth ground of this petition, and the acceptance of the treasury warrants in accordance with the provisions thereof by the railway companies under which appellant claims at par with specie for freight and passenger fares constituted a contract between said companies and the State of Texas within the protection of the Constitution of the United States, which could not, under said Constitution, be impaired by any subsequent act of the State.

Statement.

See defendant's first amended answer (Trans., 8–40) and the acts above referred to and quoted above under the ninth ground of this application.

Fourteenth.

It appearing that the laws authorizing the payments in question to be made in treasury warrants were valid when passed, and that all persons within the limit of the State were subject thereto, that the action of the railway companies under which appellant claims in accepting said warrants at par with specie for freight
394 and passenger fares in order to use the same in making the payments in question was lawful under the laws and policy of the State at the time, and that the making of said payments and the allowance of credit therefor was, at the time of the transaction, in compliance with the laws of the State as then in force with respect to all persons within the limits of the State, and the said court of civil appeals erred in not deciding and holding that said companies thereby acquired a vested right to credit for said payments within the protection of the constitution of the State and of the United States, especially the fourteenth amendment of the Constitution of the United States, and that they could not be deprived of said vested right by any subsequent change in the law or public policy of said State.

Statement.

See thirty-ninth ground of appellant's motion for rehearing and the statement of facts established by the evidence as given in the statement under the seventh ground of this application.

Fifteenth.

The said court of civil appeals erred in not sustaining and holding well taken appellant's twenty-sixth, fortieth and forty-first assignments of error, grouped and presented together in appellant's brief and in the sixteenth ground of its motion for rehearing, and which read as follows:

"Twenth-sixth. The court erred in finding and concluding that the acts of the legislature of the State of Texas authorizing the payments in question to be made in treasury warrants were passed in aid of the rebellion and were for that reason void, because there was no evidence whatever to support and the evidence is insufficient to sustain the finding that the acts or either of them were passed in aid of the rebellion, and there was nothing upon the face of said acts indicating that they were passed for any such purpose.

"Fortieth. The court erred in denying defendant credit for
395 and holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant on the ground that the laws authorizing such payments were passed in aid of the rebellion and for that reason were void, when there was no evidence to support or sufficient to sustain such finding and when there was nothing upon the face of said laws to indicate that they were passed for any such purpose or were for any reason invalid.

"Forty-first. The court erred in denying defendant credit for and in holding invalid the payments shown to have been made on the indebtedness declared on in treasury warrants of the State of Texas and in rendering judgment against defendant on the ground that such treasury warrants were issued in aid of the rebellion and were for that reason illegal, when there was no evidence whatever to show that the warrants or any of them used in making such payments were other than legal and valid warrants issued before or during the war in the usual course of business on appropriations duly made for the support of the civil government of the State or for other lawful purposes and when there was no evidence whatever to support or sustain said judgment."

Statement.

The court of civil appeals did not discuss the above assignments of error or the questions thereby raised and did not find, as the court below did, that the warrants in question were issued and the acts authorizing their payment were passed in aid of the rebellion. For further statement under this ground of the application, see the statements under seventh and ninth grounds above, and also appel-

!ant's brief in the court of civil appeals (pages 58–70) and the printed arguments filed by appellant in the court of civil appeals.

Sixteenth.

396 The said court of civil appeals erred in failing and refusing to sustain and hold well taken appellant's twenty-eighth assignment of error, which reads as follows:

"The court erred in finding and concluding that the companies under which defendant claims, by receiving treasury warrants of the State of Texas at par in order to be entitled to use them in making the payments in question, were aiding the rebellion, and were also in so doing supporting the circulation of treasury warrants issued to circulate as money, in violation of the constitution of the State and the United States, and that for such reason defendant acquired no right thereby to use treasury warrants in making such payments, and that State officers had no authority to accept such payments, and that they were void, because there is no evidence to support and the evidence fails to sustain these findings."

Statement.

See statement under seventh and eighth grounds of this application (also Appellant's Brief, pages 80–83).

Seventeenth.

The said court of civil appeals erred in not holding that the legislature had the power to validate and did validate the payments in question by the acts of 1870 and in not holding that said acts were sufficient evidence that the warrants used in making said payments were legal, and that the railway companies were entitled to credit therefor, and in overruling and holding not well taken appellant's thirty-fourth assignment of error, complaining of the action of the court below in holding that the legislature had no power in 1870 to validate said payments, and that it did not by said acts validate them.

Statement.

By the act entitled "An act for the relief of railroad com-
397 panies indebted to the State for loans from the special school fund," approved August 12th, 1870 (Gen. Laws 1870, page 85), and the special act entitled "An act supplementary to the act to incorporate the Buffalo Bayou, Brazos & Colorado Railway Company and to the other special acts relating to said company," approved July 27th, 1870 (Special Laws 1870, page 45), the legislature took as a basis of settlement and future payment "the aggregate amount due on account of said loans, principal and interest, as such aggregate amount stood on the first day of May, A. D. 1870."

Certified transcripts from the books of the comptroller's department showing the standing of said accounts on the first day of May, 1870, were introduced (Trans., 197–224), and these transcripts showed

that the aggregate amount of the indebtedness of said companies "as said aggregate amount stood on the 1st day of May, 1870," was as claimed by defendant and was the balance remaining after allowing said companies the credit claimed by them for payments made in treasury warrants (Trans., 197–224). For the convenience of the court we give the following summary of the account of the Houston and Texas Central Railway Company as it appears from the comptroller's books (Trans., 197–202) and of the Washington County Railroad Company (Trans., 217–218):

Summary of account with Houston and Texas Central Railway Company as it stood on the books of the comptroller of the State of Texas, as per certified transcript of folio 57, Ledger C, filed in evidence.

Total debit to column headed "Principal"	$432,000.00
" " " " "Interest"	153,520.00
Total debit to the account	$585,520.00
Less total to credit column headed "Interest"	38,290.00
Aggregate amount due on loan March 1st, 1870, principal and interest, as per comptroller's ledger	$547,230.00
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Add interest for months of March and April, 1870, being 6 % per annum on $432,000.00	4,320.00
Aggregate amount due on account loan, principal and interest, as said aggregate amount stood on the 1st day of May, 1870, as per comptroller's ledger	$551,550.00

Summary of account with Washington County railroad as it stood on the books of the comptroller of the State of Texas, as per certified transcript of folio 59, Ledger C, filed in evidence.

Total debit to column headed "Principal"	$37,017.00
" " "Interest"	11,427.98
Total debit to the account	$48,444.98
Less total to credit column headed "Interest"	317.98
Aggregate amount due on loan March 1st, 1870, principal and interest, as per comptroller's ledger	$48,127.00
Add interest for months of March and April, 1870, being 6% per annum on $37,017.00	370.17
Aggregate amount due on loans, principal and interest, as said aggregate amount stood on the first day of May, 1870	$48,497.17

By the special act entitled "An act for the relief of the Houston & Texas Central Railway Company," passed August 15th, 1870 (Special Laws 1870, page-325–328), and which is set forth in full in the transcript (pages 175–180), the validity of these payments was expressly recognized and admitted by the State. That act provided, among other things, that in making the settlement therein provided for "the Houston & Texas Central Railway Company shall be allowed a credit for the sums paid in treasury warrants of the State during the years 1864 and 1865 by the said company and the Washington County Railroad Company upon the accounts on which said sums were respectively paid by said companies, the said sums amounting, in the aggregate, to $152,864.55 (Trans., 178).

399 At the time the above-mentioned acts were passed the persons who were in the best position for knowing the character of the warrants used and the circumstances of the payments were living, but have since died (Trans., 309–311). The State's petition is grounded upon these acts (Trans., 1–8) (Appellant's Brief, 91–97).

Eighteenth.

The said court of civil appeals erred in overruling and holding not well taken appellant's fifth assignment of error, complaining of the action of the court below and overruling appellant's exceptions to so much of the State's petition as alleged that the warrants used in making such payments were at the time practically worthless and without market value, and appellant's seventh assignment of error, complaining of the action of the court below in admitting evidence of the market value of the State treasury warrants during the years 1863 and 1864.

Statement.

It was pleaded by the State in its first amended supplemental petition (Trans., 49, 50) in effect that the warrants used in making such payments were at the time almost worthless and had practically no market value, and that said railway companies could purchase them in the market at the time for a nominal, insignificant, or trifling sum, and that the State in using them was compelled to negotiate them at depreciated prices. It is also alleged that since peace was restored the acceptance of such warrants, as such *warrants*, was repudiated by the lawful officers of the State of Texas, and that ever since the State had maintained that such payments were illegal and unlawful, etc. The exception of defendant directed to this plea of the plaintiff is contained in defendant's first supplemental answer (Trans., 80).

400 Governor Lubbock, in response to questions propounded by the attorney general, testified in effect that the market price of the treasury warrants of the State of Texas issued during the war varied at different times; that they commenced depreciating and in 1863 and 1864 there was little value attached to them; that while governor he was accustomed to sell warrants issued to him for his salary from time to time, and upon his retirement from the office of gov-

ernor in November, 1863, he sold the warrants issued to him for his salary to Mr. De Foe, a druggist in Austin, for ten cents on the dollar, and he supposed that was the market value of the warrants, as he got all in cash that he could for them (Trans., 230). To this evidence counsel for defendant in due time objected upon the ground (1) that the same was irrelevant, (2) that the same was immaterial to any issue in this case, and (3) that the State could not legally complain in this case of the depreciation in the market value of her warrants; which objections were overruled, when defendant excepted (Trans., 135). In approving this bill of exceptions the trial judge explains that he "gave this testimony no effect in reaching a conclusion, because it did not appear when the defendant obtained the warrants used in payments or whether they were purchased at the market price or received at par in payment of carrying charges" (Trans., 135, 136) (Appellant's Brief, 34–38).

Nineteenth.

The said court of civil appeals erred in overruling and holding not well taken appellant's twenty-first assignment of error, which reads as follows: "The court erred in its finding and conclusion that all the allegations of fact contained in plaintiff's original petition are true, as therein stated, for there was not due and unpaid on the bonds of the Houston and Texas Central Railway Company described in said petition, on the 1st day of May, 1870, principal and interest, the sum of $657,324.35, as alleged in said *said*
401 petition; but only the sum of $551,550.00 was so due and unpaid on said date; and in finding that on said bonds of the Washington County Railroad Company there was on May 1st, 1870, $103,840.01 when only $48,497.17 was due, being the balances after allowing defendant the credit for the amounts theretofore paid by said companies, as pleaded in its first amended answer, including the amounts paid in treasury warrants, and there *was* not due plaintiff at the time of the filing of said petition the several amounts therein alleged to be then so due, because all of said indebtedness had been theretofore fully paid off and discharged."

Statement.

While the plaintiff's original petition (Trans., 1–7) stated the amount and the date of each of the loans and described the bonds given therefor, recovery was not sought for the amount of the loans or on the bonds, but merely for the balances remaining unpaid on the 1st day of May, 1870, as such balances were fixed by and were to be ascertained under the general act of August 13th, 1870 (Gen. Laws 1870, page 85). The only evidence of the amount of such balances or of such indebtedness, as such indebtedness stood on May 1st, 1870, were certified transcripts from the books of the comptroller's department (Trans., 197, 224), and these transcripts showed that the aggregate amount of the indebtedness to the State by the Houston and Texas Central Railway Company (Trans., 197–202), "as said aggregate amount stood" on the 1st day of May

1870, was $551,550, instead of $657,324.35, as alleged in plaintiff's petition, and that of the Washington County Railroad Company (Trans., 217, 218) was $48,497.57 instead of $103,810.01, as alleged in plaintiff's petition (Appellant's Brief, 50, 51).

Twentieth.

The said court of civil appeals erred in failing to sustain and
402 hold as well taken appellant's twenty-second assignment of error, which reads as follows: "The court erred in finding as a fact that neither the State nor the railroad companies discriminated as to the class of warrants received by said companies for carrying services or used in making the payments in question, and that some of all kinds were used in making the payments, because there is no evidence to support such finding and conclusion and no evidence that said railroad received or used in making such payments other than legal and valid warrants."

Statement.

The findings referred to in the above assignment are as follows:

3. "I find that it has not been proved whether the warrants actually used in making the payments were warrants issued for indebtedness incurred prior to the civil war or warrants issued for State indebtedness incurred after the war began, or, if of the latter class, whether they were warrants issued for military purposes or for civil indebtedness; but from the circumstantial evidence I conclude that neither the railroad company nor the State discriminated as to the class of warrants the railroads received for carrying services or paid on their indebtedness, and that some of all kinds were used in making the payments" (Trans., 124).

So much of this finding as is to the effect that neither the railroad company nor the State discriminated as to the class of warrants the railroads received from carrying services or paid on their indebtedness and that some of all kinds were used in making the payments is absolutely without any evidence in the record to sustain it. The transcript from the books of the comptroller's office, introduced in evidence, shows that payments in warrants, as pleaded by defendant, were made, and that they were accepted by the comptroller, who was authorized by law to
403 receive the same, and credit for such payments was duly given at the time upon the books of the State (Trans., 197–202, 210, 211, 217, 218, 220), but there was nothing whatever to indicate whether the warrants so paid in were issued before or during the war, and, if during the war, whether they were for civil or military service (Appellant's Brief, 51, 52).

Twenty-first.

The said court of civil appeals erred in failing to sustain and hold as well taken appellant's twenty-third assignment of error, which reads as follows: "The court erred in finding as a fact that the payments made in treasury warrants on the indebtedness in question

were charged off the account and the account of the State with defendant was restated May 1st, 1870, so as to ignore the said payments in treasury warrants, because there is no evidence whatever to sustain or support such finding, but the uncontradicted evidence shows that said account and said indebtedness, as it stood on the books of the State on May 1st, 1870, recognized and allowed defendant full credit for said payment in treasury warrants, and that if the same was ever charged off by the State or the account restated, so as to ignore the same, it was subsequent to May 1st, 1870."

Statement.

The finding of the court called in question by this assignment was as follows:

"4. I find that said payments in treasury warrants were charged off the account and the account of the State with the defendant railroad company was restated May 1st, 1870, so as to ignore said payments in treasury warrants."

Properly certified transcripts from the books of the comptroller's department showing the account of the State with both the
404 Houston & Texas Central Railway Company and the Washington County Railroad Company from the first loan up to and including the first day of May, 1870, was introduced in evidence (Trans., 196–224) showing the aggregate amount of said indebtedness of each of said companies as said aggregate amount stood on the first day of May, 1870. These transcripts showed that the account, as it stood on the first day of May, 1870, was as alleged in defendant's answer and showed credit to each of said companies for the payments made, as alleged, in treasury warrants, as well as for other payments theretofore made, as pleaded, and that the balance due on that date by the Houston & Texas Central Railway Company was $551,550.00 instead of $657,324.35, as claimed by the State, and by the Washington County Railroad Company was $48,497.57 instead of $103,840.01, and that said payments in treasury warrants were not charged off the account and the account of the State with the defendant railroad company restated May 1st, 1870, so as to ignore said payments, as found by the trial court. No other evidence of any kind whatever was offered by either party to show the standing of said accounts on the first day of May, 1870, and neither party offered any evidence and there was none whatever to show when such payments were recharged and said account restated, so as to ignore said payments in treasury warrants; but, as said before, the uncontroverted evidence did show that it was not on or prior to May 1st, 1870. The finding of the court, therefore, upon the point stated is absolutely without any evidence to support it (Trans., 124) (Appellant's Brief, 53, 54).

Twenty-second.

The said court of civil appeals erred in failing to sustain and hold as well taken appellant's twenty-fourth assignment of error,

which reads as follows: "The court erred in finding that it
405 was not proved that the governor was threatening to sell defendant's railroad to force the repayment of the amounts paid in treasury warrants, or whether he would have resorted to a suit to enforce such payments, because it was not disputed and the evidence abundantly established the fact."

Statement.

The written protest filed by the Houston and Texas Central Railway Company with the comptroller (Trans., 228, 229), and which the comptroller accepted and endorsed as filed in his office, showed that the comptroller refused to allow the credit for the payments theretofore made in treasury warrants, and that "the governor threatened to advertise and sell the said railways unless the full sum of interest and sinking fund claimed by" the comptroller was paid in gold by the company (Trans., 228). There was no issue upon this fact made in the proof by the State. The issue was voluntarily raised by the trial judge and first appeared in the case from the lengthy written opinion filed by the court when he announced the judgment (Trans., 120–123). See also 5th finding of fact by the court (Trans., 124) (Appellant's Brief, 54, 55).

Twenty-third.

The said court of civil appeals erred in failing to sustain and hold as well taken appellant's twenty-fifth assignment of error, which reads as follows: "The court erred in finding and holding that by the act approved January 11th, 1862, the time for paying the interest and sinking fund maturing on the loans declared on in plaintiff's petition was extended until six months after the close of the war, and that for that reason the payments in question, made in treasury warrants, were made before the same were due and when no payment on account of said indebtedness was required to be made because the said act of January 11th, 1862, only ex-
406 tended the time for making such payments until the first day of January, 1864, or until six months after the termination of the war, if it should terminate before said date."

Statement.

In the written opinion filed by him at the time the judgment appealed from was rendered the trial judge held that the payments by the railway companies in treasury warrants at the time they were made were voluntary, because he says "they were not bound to pay anything on their indebtedness to the school fund after January 11th, 1862, until six months after the close of the war. On that date the legislature passed an act relieving them from such payments until six months after the close of the war." The act referred to is as follows:

"An act for the relief of certain railroad companies of the State of Texas.

"SECTION 1. Be it enacted by the legislature of the State of Texas, That the payment of all interest and the two per cent. sinking fund due and to become due on the bonds issued by the several railroad companies of the State of Texas, for loans from the special school fund, be and the same is hereby extended until the first day of January, 1864, or until six months after the termination of the present war between the Confederate States and the United States of America, should it terminate before the time above named.

"SEC. 2. That this act shall in nowise impair the prior lien which the State now holds upon any railroad for the payment of the loans and interest now due or to become due by such roads to the State.

"SEC. 3. That this act take effect and be in force from and after its passage.

"Approved January 11, 1862" (Appellant's Brief, 56, 57).

407 Twenty-fourth.

The said court of civil appeals erred in finding and holding "that the amount due the State is the amount for which judgment was rendered," and in overruling and holding not well taken appellant's thirty-fifth assignment of error, which complains, in effect, of the action of the court below in rendering judgment against appellant for $673,109.56, as principal and interest to the date of the judgment, when, according to plaintiff's pleadings and the undisputed evidence, the State, if entitled to recover at all, was in no event entitled to recover more than $641,019.18.

Statement.

See appellant's thirty-fifth assignment of error and brief, p. 102.

Plaintiff's petition alleged that the balance due on the loan to the Washington County Railroad Company on November 1st, 1870, was $86,655.90 (Trans., 6, paragraph 15th); interest on that amount at the rate of six per cent. per annum from November 1st, 1879, to February 29th, 1896, the date of the judgment, is $84,893.76, making the total due at the date of the judgment, on account of the loan to the Washington County Railroad Company according to the State's own claim, $171,549.66.

According to the plaintiff's petition the amount due on the loan to the Houston and Texas Central Railway Company on November 1st, 1893, was $411,935 84 (Trans., 6, paragraph 16th); interest on that amount from that date to February 29th, 1896, the date of the judgment, at 6 per cent. is $57,533.68, making the total due on the loan to the Houston and Texas Central Railway Company, according to the State's own claim, $469,469.52, or to state the matter another way:

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Balance due November 1st, 1893, by H. & T. C. R'y Co	$411,935.84
Interest thereon from Nov. 1st, 1893, to Feb. 29th, 1895, at 6 per cent	57,533.68
Balance due by Washington County R. R. Co., Nov. 1st, 1879	86,655.90
Interest thereon from Nov. 1st, 1879, to Feb. 29th, 1896, at 6 per cent	84,893.76
Total due, according to the State's own claim, Feb. 2, 1896	$641,019.18

Twenty-fifth.

The said court of civil appeals erred in overruling and holding not well taken appellant's thirty-ninth assignment of error, which reads as follows: "The court erred in finding and holding as matter of law that the entire amount of the indebtedness claimed by plaintiff against defendant and which the court found to exist was due on the ground that defendant had been in default for more than ten days in making payments of interest and sinking fund thereon, whereas if said indebtedness exists and defendant is in default thereon, it appears that such default is due to the *bona fide* and reasonable belief and contention upon defendant's part that it had paid off and satisfied said indebtedness in full by the payments in question."

Statement.

It is evident from the whole record that the payments were discontinued by appellant upon the *bona fide* and reasonable belief upon its part that the indebtedness had been paid off and satisfied in full by the payments set forth in its answer.

Among the findings of the court below are the following:

"2. I conclude that the defendant and the corporations whose rights passed to defendant paid in money the payments which defendant pleads were paid in money on indebtedness sued on, and that the payments in treasury warrants pleaded by defendant were made in State treasury warrants on the dates set out in defend-
409 ant's answer and were accepted by the State's officers, to whom the payments were made, as valid payments" (Trans., 123, 124).

Of course, if the payments made in treasury warrants were valid the debt was fully satisfied. The payments were made in accordance with the acts of December, 1863, and May and November, 1864, hereinbefore referred to, and were expressly authorized by said acts as far as they are valid (Appellant's Brief, 101, 102).

Twenty-sixth.

The said court of civil appeals erred in rendering judgment foreclosing a lien upon a part of appellant's railroad and other prop-

erty specified in the judgment of said court and ordering sale thereof to satisfy the amount declared to be due by said judgment when there was no evidence whatever to support said judgment or to show what part of appellant's road was constructed prior to August 13th, 1870, or to warrant the said court in declaring or foreclosing a lien upon any part of appellant's property, and erred in not reversing and remanding the judgment of the court below for the errors complained of by appellant's thirty-sixth and thirty-seventh assignments of error in foreclosing a lien upon all of appellant's railroad, corporate property, and franchises and rendering judgment against appellant personally for the indebtedness declared to exist by said judgment.

Statement.

The district court rendered judgment foreclosing a lien upon appellant's entire railroad and all its corporate rights and franchises and also rendered personal judgment against appellant for the amount of the debt.. These rulings were complained of by appellant's thirty-sixth and thirty-seventh assignments of error (Brief, pages 97, 101). The court of civil appeals held that these assignments of error were well taken, that appellant was not
410 personally liable and that no lien existed upon its railroad, etc., except such part thereof as was in existence prior to August 13th, 1870, but proceeded to reform the judgment so as to render no personal judgment against appellant, and to foreclose a lien upon that part of appellant's road in existence on August 13th, 1870, together with all other property in connection therewith mentioned in the judgment below, such as depots, franchises, etc., of that part of the road, and this ruling was complained of as the thirty-sixth ground of appellant's motion for rehearing.

The lien given by the act of August 13th, 1870, *1856*, as amended by the act of August 26th, 1856, was upon "the road and charter rights of such company, including the road-bed, right of way, grading, bridges, iron rails, equipments and masonry, and upon all the stock subscribed for in said companies and all the depots and depot stations and property owned by such company as necessary for its business" (Gen. Laws 1856, page- 31, 37); but the act of August 13th, 1870, provided "that said lien or mortgage of the State shall not attach to any extension of its existing road hereafter constructed by any of said companies" (Gen. Laws 1870, chapter 63, pages 85, 86).

Appellant was incorporated under the general laws of the State on August 1st, 1889, by articles of incorporation filed by F. P. Olcott and associates who had purchased the railroad and all the property and rights of the Houston & Texas Central Railway Company, including the Washington County railroad, at foreclosure sale (Trans., 167–174).

The State's original petition (paragraph 9th) alleged that the road that had been constructed and completed by the Houston & Texas Central Railway Company prior to August 15th, 1870, ex

tended from the original terminus thereof "on the left bank of Buffalo bayou, in the city of Houston, in Harris county, Texas, and running thence in a general northwesterly direction
411 through the counties of Harris, Waller, Grimes, Brazos, Robertson, Falls, and Limestone, including the 1st, 2nd, 3rd, 4th, 5th, and 6th sections of twenty-five miles each to a point one hundred and fifty miles from the place of beginning, about three miles south of Kosse, in Limestone county," and that on the same date the Washington County Railroad Company had constructed and completed "a line of railroad beginning at the point of junction of said Western branch with the track of the main line of the Houston & Texas Central railroad in the town of Hempstead, in Waller county, thence in a general westerly direction through Waller and Washington counties for about twenty-one and one-fourth miles to a point in the town of Brenham, in Washington county;" and the petition only claimed a lien upon such parts of appellant's road (Trans., 1–7).

Not one word of evidence was introduced to sustain the above allegations of the State's petition or to show what part of appellant's road was in existence on August 13th, 1870; therefore the judgment of the court of civil appeals foreclosing the lien is based only on the unsupported allegation of the State's original petition, without any evidence whatever.

Petitioner begs leave to refer in support hereof to its brief and to the printed arguments in its behalf filed in this cause in the court of civil appeals, and upon the stipulation of the attorney general filed herewith prays that it be allowed thirty days from the filing hereof within which to prepare and file additional arguments in support of this application.

Wherefore petitioner prays, upon each and all the grounds and for each and all the reasons hereinbefore stated, for a writ of error in this cause to the said court of civil appeals for the third supreme judicial district, as provided by law.

J. P. BLAIR,
BAKER, BOTTS, BAKER & LOVETT,
Attorneys for Houston & Texas Central Railroad Company, Petitioner.

(Endorsed:) Application No. 1628. Houston & Texas Central Railroad Company *vs.* The State of Texas. Petition for writ of error. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Dec. 1, 1897. R. H. Connerly, clerk. Filed in supreme court Dec. 1, 1897. Chas. S. Morse, clerk, by F. T. Connerly, deputy.

I, Chas. S. Morse, clerk of the supreme court of Texas, hereby certify that the above and foregoing fifty-two pages contain a true and correct copy of the petition for writ of error filed in this court by the Houston & Texas Central Railroad Company in application No. 1628, Houston & Texas Central R'y Co. *vs.* The State of Texas.

Witness my hand and the seal of said court this the 26th day of April, A. D. 1898.

[SEAL.]

CHAS. S. MORSE, *Clerk*,
By F. T. CONNERLY, *Deputy*.

(Endorsed:) Application No. 1628. H. & T. C. R. R. Co. *vs.* State of Texas. Certified copy of petition for writ of error. Filed in court of civil appeals, 3rd supreme judicial district, April 26th, 1898. R. H. Connerly, clerk.

412 *Order of Supreme Court of Texas Refusing Application for Writ of Error.*

In Supreme Court of Texas, Third District.

H. & T. C. R. R. Co.
vs.
THE STATE OF TEXAS.

FEBRUARY 28TH, 1898.

This day came on to be heard the application of the H. & T. C. R. R. Co. for a writ of error to the court of civil appeals for the third supreme judicial district, and, the same having been duly considered, it is ordered that said application be refused; that the applicant, the Houston & Texas Central Railroad Company, and its sureties, C. P. Huntington, Thos. H. Hubbard, Wm. D. Cleveland, Sam. Allen and C. Lombardi, pay all costs incurred on this application.

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by said court on the application of the H. & T. C. R. R. Co. for a writ of error.

Witness my hand and the seal of said court this the 24th day of March, A. D. 1898.

[SEAL.]

CHAS. S. MORSE, *Clerk*,
By F. T. CONNERLY, *Deputy*.

(A motion for rehearing filed by the applicant was overruled on March 24th, 1898.)

(Endorsed:) No. 1628. H. & T. C. R. R. Co. *vs.* State of Texas. Copy of judgment in supreme court. Application for writ of error refused. Filed in court of civil appeals, 3rd sup. jud. dist. of Texas, at Austin, Texas, March 24th, 1898. R. H. Connerly, clerk.

413 *Motion for Rehearing.*

In the Supreme Court of Texas.

HOUSTON & TEXAS CENTRAL RAILROAD Company
vs.
THE STATE OF TEXAS. } Application No. 1628.

Application for writ of error to the third supreme judicial district.

Now comes The Houston & Texas Central Railroad Company, appellant in the court of civil appeals for the third supreme judicial district in the above entitled and numbered cause and applicant for writ of error in said cause in this court, and moves the court to set aside the order heretofore rendered in this cause denying its application for writ of error in said cause, and prays for a rehearing for the reasons following, to wit:

First.

This court erred in refusing and denying this applicant's petition and application for writ of error, thereby sustaining what is probably the largest judgment ever rendered for money in the courts of this State upon a controverted demand, and thereby also holding unconstitutional several acts of the legislature of the State of Texas and determining other questions of great importance to the public as well as to applicant, without a hearing and without any opportunity to applicant to be heard, through its counsel or otherwise, than by a printed brief and argument and without any written opinion or other statement being given by the court of the reasons and grounds upon which such large in-
414 terests and such important questions were thus determined.

Argument.

We earnestly submit that applicant is entitled to be heard in the supreme court of the State upon its rights involved in this case. The amount involved alone entitles it to it. While it may be true that the amount of the judgment is no more to the applicant than a smaller amount would be to some other litigant, yet the pecuniary amount involved, which is an element in practically all questions of jurisdiction, should have its due weight regardless of the other means or financial ability of the litigant. We think we are safe in saying that this judgment is for a larger amount in money than any other judgment ever rendered in any of the courts of this State upon a controverted demand, and yet the party required to pay it is not only denied a hearing in the supreme court of the State, though having duly observed every form of procedure requisite to that end, but may never know the reasons upon which it was ultimately held liable. This court has repeatedly held that the refusal of a writ of error does

not imply approval of the reasons given in the opinion of the court of civil appeals. So far as applicant knows, the reasons inducing this court to refuse the writ of error were wholly different from the reasons given by the trial court in the first instance and by the civil court of appeals in affirming the judgment. So far as applicant knows, this court may have refused the writ of error through some misapprehension of a point presented or of a part of the record which could be easily explained if attention were called to it. Possibly this may not be true, and yet it may be, for many such instances have occurred.

Aside from the question of the amount involved, this court, in refusing the writ of error, has in effect held unconstitutional at least three, and we do not know how many more, acts of the legis-
415 lature of this State, since the court of civil appeals in its opinion virtually strikes down the whole body of legislation enacted during the war which admitted at all of transactions in treasury warrants. It is certainly an anomalous system of jurisprudence that either permits an inferior court to finally declare a legislative act unconstitutional or contemplates that the supreme court will annul legislation in silence and without an opportunity being accorded to a party claiming rights under such legislation to be heard in the highest court of the State in support of it. It is true that the amendment properly left to the legislature a large measure of discretion respecting the jurisdiction of the court and the methods of procedure, but we do insist that neither the people in adopting the constitution nor the legislature in dealing with the jurisdiction of this court ever contemplated that a statute of this State should be finally declared unconstitutional without a right to some person interested under it to have a hearing in this court in support of its validity. While the jurisdiction of the court might be limited by the legislature to cases involving certain amounts and to certain classes of cases, yet it was never contemplated that it should be denied in cases involving the constitutionality of an act of the legislature. It will not do to say that the consideration and decision of an application for writ of error is the exercise of jurisdiction over the merits of the controversy. It is merely a means prescribed by the legislature without any express direction in the constitution by which the supreme court is authorized to determine whether or not it has or will exercise the jurisdiction conferred by the constitution. If it is the exercise of jurisdiction upon the questions presented, then, according to all the principles and traditions of the system of jurisprudence to which we are accustomed, the parties are entitled to be heard upon the questions. The refusal of a writ of error is a refusal
416 to take jurisdiction. Certainly this is the view of our present appellate system held by the Supreme Court of the United States (Bacon *vs.* Texas, 163 U. S., 207), and the proposition does not seem to admit of doubt. We insist, therefore, that, looking to the spirit, if not to the letter, of the constitution and statutes defining and regulating jurisdiction of this court, the supreme court ought to take jurisdiction in every case in which a court of civil appeals has held a statute of the State to be void. That it should do so was, we submit, not only contemplated by the constitution

and by the statute, but independent of that consideration every person claiming a right under any statute of the State ought to have the right of a hearing in the supreme court of the State before the statute is finally declared void. This right has been denied the applicant in this case, and we earnestly insist that in denying it the court was in error.

It is seldom, if ever, that a case involving so many questions of importance affecting not only large pecuniary interests, but also rights under the national as well as the State constitution and other questions of great public interest and importance, is presented in the courts of this State or in any of the other States. Every one who reads the opinion of the court of civil appeals or the comments upon it in any of the numerous legal publications will be impressed with the unusual character and importance of the questions involved, and many will look with interest for the ultimate decision of the case by the highest court of the State, and when informed that the parties interested were not entitled to and were denied a decision of the questions by the highest court of the State they will naturally wonder what system of jurisprudence prevails in Texas. While this suggestion, of course, does not affect the right to a writ of error, it is offered as illustrating the reasons upon which applicant insists that in a case involving so much money and so
417 many important constitutional questions it is entitled to the exercise of the jurisdiction of this court. It is not believed that in any other civilized community on earth a citizen can be deprived of so much money by the judgment of a judicial tribunal without having the right, by observing due methods of procedure, to have the highest tribunal exercising jurisdiction in such community to pass judgment upon the questions involved, nor that an act, and indeed a series of acts, of the legislative department by which important rights were conferred can be stricken down and declared unconstitutional by a subordinate court without an appeal upon the question to the highest court of the State or community and a judgment of that court upon the question.

Upon these considerations we earnestly insist that even if this court has an unquestionable right to refuse to take jurisdiction in a case involving the questions presented in this case it should not refuse to do so, but should allow the writ and determine the questions properly presented for its decision. It is a right which every citizen and every corporation ought to have in a case of such magnitude. Applicant was not allowed under the rules of the court to argue orally its cause or to be heard by the court otherwise than by printed brief and argument, and while it presented as best it could in that manner the questions involved to the court, such presentation was, at best, necessarily imperfect, and certainly much less satisfactory than an oral discussion of the questions before the court where questions might be asked and answered, but, as it is, the questions have been determined without one word from the court or any member of it indicating what was conceived to be a sufficient reason why the propositions contended for should not be sustained,

however much confidence we have in the sufficiency of the grounds urged.

Second.

This court erred in refusing to sustain and grant a writ
418 of error upon the first ground presented therefor in applicant's petition for writ of error, which reads as follows:

"The said court of civil appeals erred in overruling and holding not well taken appellant's first assignment of error, complaining of the action and ruling of the court below in refusing appellant's application to remove this cause into the circuit court of the United States for the western district of Texas, and in holding that the court below was authorized to proceed with this cause after the presentation of the petition and bond for such removal."

Argument.

We invite the court's attention to the statement and argument in support of the first ground of the petition for writ of error, as contained in the printed brief and argument supporting the application, pages 5–8, and pray the court to again consider this point. In addition to what is there said, we beg to suggest further that the effect of the State's demurrers was to admit for the purpose of the demurrers the truth of all the allegations of payment made in defendant's answer, which showed full payment of the debt declared on, and therefore constituted, if true, a complete defense to the plaintiff's suit. The case as presented by the demurrers, then, was that the debts sued on had been paid, but the State was seeking, in effect, to avoid such payments upon the ground, among others, that they were made in paper issued in violation of the Constitution of the United States, prohibiting any State from emitting bills of credit, and that such payments were therefore void, and also upon the ground that the case presented amounted to a diversion of the school fund from the purpose for which it was granted to the State. The very first ruling, therefore, that the court was called upon to make, viz., upon the demurrers presented, depended solely upon the construction of the Constitution and a law of the United States. Now, it is well settled that where it appears that some title,
right, privilege, or immunity on which a recovery depends
419 be defeated by one construction of the Constitution or a law of the United States, or sustained by a contrary construction, a removable case is presented (Carson *vs.* Dunham, 121 U. S., 421; Cooke *vs.* Avery, 147 U. S., 375). The claim that the fund in question was granted by Congress for special purposes from which the legislature could not divert it was urged as a ground of recovery, notwithstanding the payment shown to have been made. So also was the claim that the payments had been made with paper issued in violation of the Constitution of the United States, denying to the State the power to emit bills of credit. This, of course, involved the construction of the Constitution of the United States as well as the act of Congress under which the money was received by the State, and as a recovery with respect to such issues would be

defeated by one construction or sustained by another, the case comes clearly within the principle of the decision above referred to and which we understand to be unaffected by the decision in Tennessee *vs.* Bank, 152 U. S., 454. Whether these grounds were sufficient or not is wholly immaterial, since it is clear that the State relied upon them with others for recovery for overcoming defenses otherwise deemed sufficient.

It is to be borne in mind, too, that this was a suit for the foreclosure of a lien—a proceeding addressed to the equity powers of the court. But for the abolition in this State of the distinction between pleadings at law and in equity the suit would have been by a bill in equity. Since its own records show that the payments had been made, and since the transaction was fully executed, it would have been necessary in such a bill for the State to allege the ground upon which it sought to avoid the executed transaction. But whatever form the State in such a case might have adopted, no bill sufficient under the elementary rules in reference to bills in equity could have been framed and sustained that omitted reference to these payments and the grounds upon which
420 the State sought to avoid them, and thus the Federal questions would have been presented. While it is true that the forms of equity pleading are not observed here, yet we submit that our system is not available to deprive the Federal courts of jurisdiction belonging to them, or to deprive litigants of the right they have to invoke that jurisdiction, where the construction of the Constitution or a law of the United States is involved. In administering the relief sought by the plaintiff, we submit that if it was necessary for the State to allege these Federal questions at all it is wholly immaterial, so far as the right to remove is concerned, whether the allegation was contained in the original petition or presented by a subsequent and supplemental pleading. We do not understand, as the court of civil appeals seems to, that the effect of the decision of the United States Supreme Court in Tennessee *vs.* Bank, *supra*, is that plaintiff's cause of action must be based upon some act of Congress or a treaty of the United States or the Constitution of the United States. It is sufficient that the plaintiff, according to *his* statement of *his* own case, should present questions calling for a construction of the Constitution or a law or a treaty of the United States upon the construction of which some right, privilege, or immunity will depend. Whatever may be the system of pleading in force in the State where the case arises, if this appears from the plaintiff's pleading, whether in the original petition or in some subsequent pleading of the plaintiff, by whatever name it may be called, a removable case exists. The form of the pleading should not and does not properly affect the question. If it appears from the whole pleadings of the plaintiff, whether consisting of one or a dozen petitions filed at different times, that, according to the statement of *his* own claim, a Federal question is presented, the cause is properly removable to the Federal court. That the State did by its own pleadings in this cause distinctly present at least two
421 questions of this character admits of no question, and we submit that the right to remove was wrongfully denied.

Third.

This court erred in refusing to sustain and grant a writ of error upon the second ground presented therefor in applicant's petition for writ of error, which reads as follows:

"The said court of civil appeals erred in not deciding and holding that the payments in question were presumed to be legal until shown by the evidence to be otherwise, and in not deciding and holding that the burden was upon the State as plaintiff to plead and prove the illegality upon which it relied to avoid the payments in treasury warrants, and in not sustaining and holding well taken appellant's twenty-ninth, thirtieth, and thirty-first assignments of error, grouped and presented together, as involving substantially the same question in appellant's brief in said court, and which read as follows:

"'Twenty-ninth. The court erred in concluding and holding, as matter of law, that no presumption could arise or exist that the officers of the State of Texas accepting the payments in question, made in treasury warrants, accepted only such warrants as were issued in aid of the civil government.

"'Thirtieth. The court erred in concluding and holding, as matter of law, that the burden of proof was upon defendant to plead and prove the particular kind and character of warrants used in making the payments in question, or that defendant was required to do more than plead and prove the payment in such treasury warrants as were acceptable to and were, in fact, accepted by the comptroller of the State of Texas, who was by law authorized to receive the same as such payments.

"'Thirty-first. The court erred in concluding and holding, as matter of law, that the burden of proof was on defendant to
422 show that the treasury warrants used in making such payments were legal and valid, or to show more than the fact that the warrants used in making such payments were accepted by the officers authorized to receive the same.'"

Argument.

We urge the court to reconsider this ground of the application for writ of error. It is very fully discussed in our printed argument filed in support of the application (pages 9–27), and without repetition we invite the court's attention to the argument there presented. We insist that in order to sustain the judgment in question the burden of proof, which universally rests upon him who holds the affirmative, must be shifted to him who holds the negative of the issue, and presumptions always heretofore indulged must be reversed and the doctrine established by a long line of decisions of the Supreme Court of the United States respecting legislative and official actions during the war, and the presumptions obtaining in favor thereof must be repudiated, and more than one decision of this court cited in the argument referred to overruled.

Fourth.

This court erred in refusing to sustain and grant a writ of error upon the seventh ground presented therefor in applicant's petition for writ of error, which reads as follows:

"The said court of civil appeals erred in finding and holding that such payments as were made by appellant in treasury warrants were with treasury warrants issued after January 1st, 1862, and intended by certain acts of the legislature to circulate as money, because said finding and decision is without any evidence whatever to support it, and is, moreover, against the presumption indulged, in the absence of proof to the contrary, that the warrants *used* were —, and that the transaction was in all respects lawful, and in refusing to
423 sustain and hold as well taken appellant's twenty-seventh, forty-second, and forty-third assignments of error, grouped and presented together in appellant's brief and motion for rehearing, which, in effect, complained of the finding and conclusion of the district court that the acts of the legislature authorizing the payments in question in treasury warrants were passed in aid of legislation intended to cause such warrants to circulate as money and as bills of credit, and that the warrants in which such payments were made were issued with the intention that they should circulate as money, contrary to the constitution of the State, and were bills of credit emitted contrary to the Constitution of the United States, and that for such reasons they were illegal and the laws authorizing their payment were invalid, when there was no evidence whatever to support or sustain such finding, or that said acts were illegal, or to show that any of the warrants were other than legal and valid warrants drawn by the comptroller in the usual course of business upon the treasurer of the State to pay appropriations theretofore duly made by the legislature for the support of the State government."

Argument.

This ground involves the chief point upon which the court of civil appeals based its judgment, and we earnestly urge upon this court a reconsideration of it. We beg to ask the court again to read what we have said in the printed argument filed by us in this court in support of the application (pages 41–89) and to examine the authorities there cited. We earnestly insist that the finding that the warrants were in form or otherwise illegal is absolutely without any evidence to sustain it, and there is nothing whatever to show that they were in any respect illegal. Even if they were illegal in form (which we insist was not shown by one word of evidence), yet it is not disputed by the court of civil appeals, but is necessarily conceded
424 by it, that they represented valid obligations of the State and were issued upon lawful appropriations made by the legislature. But the conclusion of the court of civil appeals is that however lawful the appropriation and however just the debts the warrants were issued to cover, and notwithstanding the fact that the cancellation of the warrants when the payments were made canceled

valid obligations of the State, yet the mere matter of form is to control. It is, we confess, inconceivable to us that any court could so hold. We cannot believe that this court means to hold that a payment made in warrants issued for lawful purposes in pursuance of appropriations duly made for the support of the State government and other lawful objects is illegal and void and should be disregarded merely because the form of the warrants (that is, the size, shape, and color of the paper and the denomination of the warrants) used was illegal, and that while the transaction was effective to cancel the just obligations of the State represented by the warrants, yet it was illegal so far as it purported to cancel the debt due to the State in the payment of which the warrants were received. While we insist that the findin*d* that the warrants were in form or otherwise illegal is wholly unsustained by any evidence, yet, if that were conceded, we still insist as a legal conclusion therefrom that the validity of the payments would remain unimpaired, since it is true, so far as the court of civil appeals finds that the warrants were issued only for lawful purposes, and if illegal in any particular they were so only with respect to form. The warrants having been issued for lawful purposes, so far as the record shows, the obligation of the State to pay the amounts they represented would be today in law and morals as great as its obligation to pay the salary of the judges of this court. To hold that the State, while enjoying the benefit of the transaction in question, which accomplished the cancellation and satis-
425 faction of these obligations, can claim repayment of the debt in satisfaction of which it received them is a proposition for which, we believe, no precedent outside of this case can be found. In this connection we trust that the court will read the opinion of the Supreme Court of the United States in Little Rock *vs.* National Bank, 98 U. S., 308.

Fifth.

This court erred in refusing to sustain and grant a writ of error upon the eighth ground presented therefor in applicant's petition for writ of error, which reads as follows:

"The said court of civil appeals erred in holding and deciding that appellant was not entitled to credit for the payments made in treasury warrants, even if such payments were made in warrants intended to be circulated as money, when it appeared that such warrants were drawn by the comptroller upon the treasurer, in obedience to law, to pay appropriations duly made by the legislature and evidenced valid indebtedness of the State, which was thereby extinguished, and when it appears that the transaction was regarded as legal by all parties when made and is and long has been fully executed, and when it appears from the undisputed evidence that if such warrants and the transaction in which the payments were made were illegal the State was a party thereto and was — wrong-doer, if there was wrong, and is therefore *in pari delicto*, and, the transaction being fully executed, the State is bound by it, and erred in not sustaining and in overruling appel-

lant's third, fourth, thirty-second, thirty-third, thirty-fourth, forty-fifth, and forty-sixth assignments of error (copied in statement below), which complained in effect of the judgment of the court below in its rulings on the pleadings, in its findings of fact, and in its conclusions of law to the effect, substantially, that the State was not bound by its acceptance of the payments in warrants and the credits therefor given upon its books to the railroad companies making
426 such payments and could repudiate such payments, and was not bound by its acts and the acts of its officers in the premises and is not *in pari delicto* with respect to such transaction, although the uncontradicted evidence shows that the warrants were drawn by the comptroller upon the treasurer, in obedience to laws in force since the State was created, to pay appropriations duly made by the legislature, were accepted by the railroad companies, at the instance of the State, at par with specie for the payment of freight and passenger fares under promises on the part of the State to accept them as such payments, were accepted by the comptroller, who was the officer designated by law to receive them and who gave at the time due credit therefor, and when the undisputed evidence further showed that if there was any illegality in the warrants or any wrong whatever in the transaction the State was the wrong doer throughout, and therefore *in pari delicto*, and, the transaction being fully executed, the State is not entitled to relief against it."

Argument.

We have discussed in our printed argument in support of the application (pages 91–123) this ground of the application, and we beg to refer the court to the argument there presented as well as to the argument upon the same point filed in behalf of applicant in the court of civil appeals. We have there written about all that it seems to be practicable to thus present understandingly and pertinently in support of this ground, but much remains to be said and emphasized in support of it as well as in support of each of the other grounds of this motion by way of oral argument, which we hope the court may allow.

Sixth.

This court erred in refusing to sustain and grant a writ of error upon the ninth ground presented therefor in applicant's petition for writ of error, and which reads as follows:

427 "The said court of civil appeals erred in holding and deciding that the acts authorizing the payments in warrants now in question were unconstitutional, when there is nothing upon the face or in the terms of any of said acts to show the same to be in any respect in conflict with the constitution or to show an unlawful purpose upon the part of the legislature in enacting the same, and erred in looking to other legislation enacted during the war period and indulging in inferences of fact as reasons for holding such acts unconstitutional instead of determining the constitutionality of such acts by their own terms."

Argument.

We urge the court to reconsider this ground of the application and beg to refer to our argument filed in this court in support of the application (pages 124–135). It seems to us that argument ought not to be required to show that where a statute is clearly within the constitutional power of the legislature and is free upon its face from any apparent vice the courts cannot seek in the motives and objects of the legislature, and, indeed, facts and transactions occurring many years before, for grounds upon which to annul the act of the legislature.

Seventh.

This court erred in refusing to sustain and grant a writ of error upon the thirteenth ground presented therefor in applicant's petition for writ of error, and which reads as follows:

"The said court of civil appeals erred in not deciding and holding that the acts of the legislature of the State of Texas approved February 9th, 1861, December 16th, 1863, May 28th, 1864, and November 16th, 1864, pleaded by appellant in its answer in the court below and quoted in the statement under the ninth ground of this petition, and the acceptance of the treasury warrants in ac-
428 cordance with the provisions thereof by the railway companies, and under which appellant claims, at par with specie for freight and passenger fares, constituted a contract between said companies and the State of Texas within the protection of the Constitution of the United States, which could not, under said Constitution, be impaired by any subsequent act of the State."

Argument.

In support of this ground we beg to refer to our printed argument filed in this court (pages 139, 140). The question is not merely whether the contract shown to exist between the State and the railroad company is one within the protection of the Constitution of the United States, which denies to the States the power to pass any law impairing the obligation of contracts, but it is also whether the contract is not one which this court as a matter of general law and common justice ought not to uphold. The protection afforded by the Constitution of the United States, of course, does not relieve this court of its duty to uphold and enforce contract rights; that there was a contract entered into between the State of Texas and the railroad company by the legislation referred to admits of no question. It was a contract which all the parties to it believed at the time to be legal and binding. It was a contract entered into by the State as a means of accomplishing what was then a great object and purpose of the State government, and designed to assist the State in maintaining its existence and in performing the obligations resting upon it as a State; being regarded at the time as legal and binding, and the State in entering into it being in the exercise at the time of the only sovereign authority then existing in fact, if not in law, within the limits of the State, it is a

contract which every principle of justice demands should always be binding upon the parties to it.

429 Eighth.

This court erred in refusing to sustain and grant a writ of error upon the fourteenth ground presented therefor in applicants' petition for writ of error, and which reads as follows:

"It appearing that the laws authorizing the payments in question to be made in treasury warrants were valid when passed, and that all persons within the limits of the State were subject thereto; that the action of the railway companies under which appellant claims in accepting said warrants at par with specie for freight and passenger fares in order to use the same in making the payments in question was lawful under the laws and policy of the State at the time, and that the making of said payment and the allowance of credit therefor was at the time of the transaction in compliance with the laws of the State as then enforced with respect to all persons within the limits of the State, the said court of civil appeals erred in not deciding and holding that said companies thereby acquired a vested right to credit for said payments within the protection of the constitution of the State and of the United States, especially the fourteenth amendment of the Constitution of the United States, and that they could not be deprived of said vested right by any subsequent change in the law or public policy of said State."

Argument.

The court is again asked to consider this ground and to read the argument in support of it, as well as the argument in support of the preceding ground (pages 139–142) of the printed argument filed in this court in support of the application.

Ninth.

This court erred in refusing to sustain and grant a writ of error upon the seventeenth ground presented therefor in applicant's
430 petition for writ of error, which reads as follows:

"The said court of civil appeals erred in not holding that the legislature had the power to validate and did validate the payments in question by the acts of 1870 and in not holding that said acts were sufficient evidence that the warrants used in making said payments were legal, and that the railway companies were entitled to credit therefor, and in overruling and holding not well taken appellant's thirty-fourth assignment of error, complaining of the action of the court below in holding that the legislature had no power in 1870 to validate said payments, and that it did not by said acts validate them."

Argument.

This ground, in our judgment, is one that admits of no answer. We earnestly urge upon the court its careful consideration, and

refer to the statement and argument in support of it as presented in our printed argument filed in this court in support of the application (pages 183–200). The acts of 1870 referred to amounted not only to a clear recognition of the validity of the payments in question, but are evidence of a conclusive character that the warrants used in making the payments were in all respects legal and valid. If it be said that the legislature at that time had no power under the constitution to compromise the claim of the State, as suggested by the attorney general, we answer that the proposition only strengthens and puts beyond question our contention that the warrants used were legal and valid, and that the company was therefore entitled to the credits claimed, for in order to hold otherwise the court must hold that the legislature violated the constitution in passing the acts. If the warrants used in making the payments were valid, then, beyond any sort of controversy, these acts were valid. It must be presumed, therefore, certainly in the absence of conclusive evidence to the contrary, that the facts
431 upon which the validity of the legislative acts depend did exist. This is a proposition that ought not to be disputed in any case. The legislature in 1870 certainly knew more and had better opportunities for knowing more than this court knows from the record in this case or otherwise what kind of warrants were used in making payments in question. As was said by a most eminent writer in speaking of the duty of courts in such cases:

"They must assume that legislative discretion has been properly exercised. If evidence is required, it must be supposed that it was before the legislature when the act was passed, and if any special finding was required to warrant the passage of the particular act it would seem that the passage of the act itself might be equivalent to such finding" (Cooley's Constitutional Limitations, page 220).

Tenth.

This court erred in refusing to sustain and grant a writ of error upon the twenty-sixth ground presented therefor in applicant's petition for writ of error, which reads as follows:

"The said court of civil appeals erred in rendering judgment foreclosing a lien upon a part of appellant's railroad and other property specified in the judgment of said court and ordering sale thereof to satisfy the amount declared to be due by said judgment, when there was no evidence whatever to support said judgment or to show what part of appellant's road was constructed prior to August 13th, 1870, or to warrant the said court in declaring or foreclosing a lien upon any part of appellant's property, and erred in not reversing and remanding the judgment of the court below for the errors complained of by appellant's thirty-sixth and thirty-seventh assignments of error in foreclosing a lien upon all of appellant's railroad, corporate property, and franchises, and rendering judgment against appellant personally for the indebtedness declared to exist by said judgment."

432 *Argument.*

We are bound to believe that this court failed to carefully consider the above ground or else that we failed to present comprehensively the point involved in it, and we therefore earnestly urge the court to reconsider it. Here is a general lien which it is provided by a subsequent agreement between the parties shall attach only to so much of the property of the mortgagor as was required prior to a certain date, but which is not described in the mortgage and which can only be ascertained by evidence of the date of acquisition. Suit is brought to foreclose the mortgage, which does not itself describe the property; consequently it is necessary for plaintiff to allege in *his* petition what property is covered by the mortgage, and of course to prove it, since otherwise no property is shown to be the subject of the lien, nor is there any particular property upon which the court can establish the lien and order — sold for its satisfaction. The allegation that certain property duly described in the petition is subject to the lien is not admitted by the defendant, but is expressly denied. Upon the issue thus joined not one word of evidence is introduced. Nevertheless upon the controverted allegation of the plaintiff's petition and without any evidence whatever to support it the court finds that the property described in the petition is that covered by the lien and orders it to be sold, and we are now told that this judgment was right. This dispenses with a vast amount of evidence in many cases where it was hitherto supposed to be necessary, and if it is the law it ought to be so declared. We submit that this court has fallen into a grave error upon this point and sustained a judgment which for this reason, if for no other, ought unquestionably to be reversed.

Eleventh.

433 Without presenting and discussing such grounds separately and in detail, applicant submits that this court erred in refusing to sustain and grant a writ of error upon the third, fourth, fifth, sixth, tenth, eleventh, twelfth, sixteenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, and twenty-fifth grounds respectively presented therefor in applicant's petition for writ of error, and urges the court to reconsider all such grounds in connection with the statement and argument in support of each as filed in this court. Our understanding is that the ground relied on for recovery and sustained by the district court and referred to in the fifteenth ground of the application for writ of error was practically eliminated by a decision of the court of civil appeals, and the error of the district court in sustaining such ground was made a ground of application for writ of error in this court only in the event that this court should consider us mistaken in our view that that ground of recovery was eliminated, and therefore we do not urge it in this motion further than as urged in the petition for writ of error. The argument, however, in support of it is applicable in a large measure to the seventh ground of the petition for writ of error, and we

refer to it as contained in the printed argument filed by us in this court (pages 144–180).

And this applicant further represents that the Honorable M. M. Crane, attorney general of the State of Texas, is attorney of record for appellee, The State of Texas, in this cause, and that he resides and has his office at the capitol, in the city of Austin, and service hereof upon him, as authorized by law, is prayed for; and applicant further prays, upon each and all of the grounds and reasons hereinbefore stated, that a rehearing of this cause be granted, and that
434 the judgment and order heretofore entered denying its application for writ of error be set aside, and that said application be granted, and that the judgment of the district court and of the court of civil appeals in this cause be reversed.

J. P. BLAIR,
BAKER, BOTTS, BAKER & LOVETT,
Attorneys for Houston & Texas Central Railroad Company, Applicant.

(Endorsed:) Mo. No. 551. Application No. 1628. Houston & Texas Central Railroad Company *vs.* The State of Texas. Motion for rehearing. Filed in supreme court March 14, 1898. Chas. S. Morse, clerk, by F. T. Connerly, deputy.

CLERK'S OFFICE, SUPREME COURT.

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above and foregoing twenty-one pages contain a true and correct copy of the motion for rehearing filed in this court by the applicant, The Houston & Texas Central Railroad Company, in application No. 1628, Houston & Texas Central Railroad Company *vs.* The State of Texas; which said motion was overruled by this court on March 24th, 1898.

Witness my hand and the seal of said court this the 26th day of April, A. D. 1898.

[SEAL.]

CHAS. S. MORSE, *Clerk*,
By F. T. CONNERLY, *Deputy*.

(Endorsed:) Motion No. 551. Houston & Texas Central Railroad Company *vs.* The State of Texas. Certified copy of motion for rehearing. Filed in court of civil appeals, 3rd supreme judicial district of Texas, at Austin, Texas, April 26th, 1898. R. H. Connerly, clerk.

434a *Order of Supreme Court of Texas Overruling Motion for Rehearing of Application for Writ of Error.*

H. & T. C. R. R. Co. *vs.* STATE OF TEXAS. } Mo. No. 551.

MARCH 24TH, 1898.

Motion for rehearing of application No. 1628. Motion overruled.

I, Chas. S. Morse, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the order of the

supreme court made on March 24th, 1898, overruling the motion for rehearing of application No. 1628, H. & T. C. R. R. Co. *vs.* The State of Texas.

Witness my hand and the seal of said court this the 26th day of April, A. D. 1898.

[SEAL.] CHAS. S. MORSE, *Clerk*,
By F. T. CONNERLY, *Deputy*.

(Endorsed:) Mo. No. 551. H. & T. C. R. R. Co. *vs.* The State of Texas. Certified copy of order of supreme court overruling motion for rehearing of application No. 1628. Filed in court of civil appeals, 3rd supreme judicial district of Texas, at Austin, April 26th, 1898. R. H. Connerly, clerk.

435 *Bill of Costs.*

In Supreme Court.

CLERK'S OFFICE, SUPREME COURT.

H. & T. C. R. R. Co.
vs.
STATE OF TEXAS. } No. 1628.

Certified copy bill of costs, supreme court.

Filing application	.50
Docketing petition	.50
Entering appearance of counsel	.50
Filing 2 briefs	.60
Filing 9 papers	2.70
Entering orders	2.00
Entering judgment on application	1.00
Certified copy of judgment	1.00
Taxing costs of application	.50
Certified copy bill of costs	1.00
Filing and entering motions 550 and 551	1.10
Total	$8.65

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and the seal of said court, at Austin, this the 24th day of March, 1898.

[SEAL.] CHAS. S. MORSE, *Clerk*.

(Endorsed:) Application No. 1628. Certified copy bill of costs in supreme court, Austin, H. & T. C. R. R. Co. *vs.* State of Texas, $8.65. Filed in court of civil appeals, 3rd sup. jud. dist. of Texas, at Austin, Texas, March 24th, 1898. R. H. Connerly, clerk.

436 *Supersedeas Bond on Writ of Error.*

Know all men by these presents that we, Houston & Texas Central Railroad Company, C. P. Huntington, Thomas H. Hub-

bard, W. D. Cleveland, Sam. Allen, and C. Lombardi, as principals, and D. O. Mills, of the city of New York, State of New York, and Lloyd Tevis, of the city and county of San Francisco, State of California, and Jas. A. Baker, Jr., R. S. Lovett, H. M. Curtin, S. E. Allen, and E. R. Taylor, of Harris county, Texas, as sureties, are held and firmly bound unto the State of Texas in the full and just sum of one hundred thousand ($100,000.00) dollars, to be paid to the said State of Texas, its successors or assigns; for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a term of the court of civil appeals in and for the third supreme judicial district of Texas, in a suit depending in said court between The Houston and Texas Central Railroad Company, appellant, and The State of Texas, appellee, a judgment was rendered against the said Houston & Texas Central Railroad Company, appellant; C. P. Huntington, Thomas H. Hubbard, W. D. Cleveland, Sam. Allen, and C. Lombardi, the sureties on its appeal bond, and said Houston & Texas Central Railroad Company, C. P. Huntington, Thomas H. Hubbard, W. D. Cleveland, Sam. Allen, and C. Lombardi having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of
437 Texas, citing and admonishing said State to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof:

Now, the condition of the above obligation is such that if the said Houston and Texas Central Railroad Company, C. P. Huntington, Thomas H. Hubbard, W. D. Cleveland, Sam. Allen and C. Lombardi shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

HOUSTON & TEXAS CENTRAL RAILROAD COMPANY,
C. P. HUNTINGTON,
THOS. H. HUBBARD,
W. D. CLEVELAND,
SAM. ALLEN,
C. LOMBARDI,
By BAKER, BOTTS, BAKER & LOVETT,
Their Attorneys.

JAS. A. BAKER, JR., *Surety.*
D. O. MILLS, *Surety.*
LLOYD TEVIS, *Surety.*
R. S. LOVETT, *Surety.*
H. M. CURTIN, *Surety.*
S. E. ALLEN, *Surety.*
E. R. TAYLOR, *Surety.*

STATE OF TEXAS, }
County of Harris. }

I, J. B. Williams, clerk of the district court in and for said county of Harris, do hereby certify that James A. Baker, Jr., R. S. Lovett, H. M. Curtin, S. E. Allen, and E. R. Taylor, whose names appear signed to the annexed bond, are, in my opinion, good and
438 ample security for the amount therein specified, and that if said bond was offered to me for approval the same would be accepted and approved.

To certify which I hereunto set my hand and official seal this 23rd day of April, 1898.

J. B. WILLIAMS,
[SEAL.] *Clerk District Court, Harris County, Tex.,*
By E. H. DUMBLE, *Deputy.*

I, D. O. Mills, do solemnly swear that I am worth in my own right at least the sum of fifty thousand dollars after deducting from my property all that which is exempt by the constitution and laws of the State from forced sale and after the payment of all my debts and after satisfying all encumbrances on my property which are known to me; that I reside in the county of New York, State of New York, and have said property in said State liable to execution worth fifty thousand dollars or more.

D. O. MILLS.

Subscribed and sworn to before me this 18th day of April, 1898.
[SEAL.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

I, Lloyd Tevis, do solemnly swear that I am worth in my own right at least the sum of fifty thousand dollars after deducting from my property all that which is exempt by the constitution and laws of the State from forced sale and after the payment of all my debts and after satisfying all encumbrances on my property which are known to me; that I reside in the county of San Francisco, State of California, and have property in said State liable to execu-
439 tion worth fifty thousand dollars or more.

LLOYD TEVIS.

Subscribed and sworn to before me this 18th day of April, 1898.
E. B. RYAN,
[SEAL.] *Notary Public in and for the City and County if San Francisco, State of California.*

Approved this April 25th, 1898.

H. C. FISHER,
Chief Justice Court Civil Appeals, 3rd Supreme Judicial District of Texas.

(Endorsed:) Houston & Texas Central R. R. Co. *et al. vs.* State of Texas. Supersedeas bond on writ of error. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, April 25, 1898. R. H. Connerly, clerk.

Duplicate Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of civil appeals in and for the third supreme judicial district of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of civil appeals in and for the third supreme judicial district of the State
440 of Texas, before you or some of you, being the highest court of the said State in which a decision could be had in the said suit between Houston & Texas Central Railroad Company, appellant, and C. P. Huntington, Thomas H. Hubbard, W. D. Cleveland, C. Lombardi, and Sam. Allen, its sureties, and The State of Texas, appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein a title, right, privilege, or immunity was claimed under the Constitution or a treaty or statute of or commission held or authority exercised under the United States and the decision was against the title, right, privilege, or immunity specially set up or claimed under such Constitution, treaty, statute, commission, or authority, a manifest error hath happened, to the great damage of said Houston & Texas Central Railroad Company and C. P. Huntington, Thomas H. Hubbard, W. D. Cleveland, C. Lombardi, and Sam. Allen, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

441 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25 day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

D. H. HART,

[SEAL.] *Clerk Circuit Court of the United States, Western District of Texas.*

Allowed by—

H. C. FISHER,

Chief Justice of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas.

(Endorsed:) Houston & Texas Central R. R. Co. *et al. vs.* State of Texas. Duplicate writ of error. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, April 25, 1898. R. H. Connerly, clerk.

Assignment of Errors in United States Supreme Court.

In the Court of Civil Appeals, Third Supreme Judicial District of Texas.

HOUSTON & TEXAS CENTRAL RAILROAD COMPANY ET AL.
vs.
STATE OF TEXAS.

Now come plaintiffs in error in the above-entitled cause, and on writ of error from the Supreme Court of the United States say that in the record and proceedings in said cause there is manifest error to their prejudice, which they assign as follows:

442

First.

The district court of the State of Texas in and for Travis county (fifty-third judicial district) erred in refusing the application of Houston & Texas Central Railroad Company, one of the plaintiffs in error herein, to remove this cause into the circuit court of the United States for the western district of Texas and in holding that said district court was authorized to proceed with this cause after the presentation of the petition and bond for such removal.

Second.

The said court of civil appeals erred in overruling and holding not well taken said plaintiffs in error's first assignment of error, complaining of the action and ruling of said district court in refusing its application to remove this cause into the circuit court of the United States for the western district of Texas and in holding that said district court was authorized to proceed with this cause after the presentation of the petition and bond for such removal.

Third.

The said court of civil appeals erred in deciding against the validity of an authority exercised under the United States drawn in question in this cause.

Fourth.

The said court of civil appeals erred in deciding against the title, right, privilege, and immunity specially set up and claimed by said plaintiffs in error under the Constitution and statutes of and authority exercised under the United States.

Fifth.

The said court of civil appeals erred in deciding in favor of the validity of statutes of and authority exercised under the State
443 of Texas drawn in question in this cause on the ground of their being repugnant to the Constitution and laws of the United States.

Sixth.

The said court of civil appeals erred in giving validity to the provisions of the constitution of Texas adopted in 1869 and the statute of Texas approved August 13th, 1870, drawn in question in this cause under a construction thereof, which impaired the obligation of the contract entered into between the State of Texas and the railway companies under which plaintiff in error, Houston & Texas Central Railroad Company, claims under and by virtue of the provisions of the acts of the legislature of the State of Texas approved February 9th, 1861, December 16th, 1863, May 28th, 1864, and November 15th, 1864.

Seventh.

The said court of civil appeals erred in giving effect to the constitution of Texas adopted in 1869 and the statute of Texas approved August 13th, 1870, as impairing the obligation of the contract provision entered into between the State of Texas and the railway companies under which plaintiff in error, Houston & Texas Central Railroad Company, claims under and by virtue of the acts of said State approved February 9th, 1861, December 16th, 1863, May 28th, 1864, and November 15th, 1864.

Eighth.

The said court of civil appeals erred in sustaining the validity of the authority exercised under the State of Texas by the governor and comptroller thereof in cancelling and discharging credits for payments made under and in accordance with the provisions of the acts of the legislature of Texas approved February 9th, 1861, December 16th, 1863, May 28th, 1864, and November 15th, 1864,
444 drawn in question in this cause on the ground of its being repugnant to the Constitution and laws of the United States.

Ninth.

The said court of civil appeals erred in affirming the validity of the action of the State of Texas through the governor and comptroller in cancelling and discharging credits given for payments made by the railway companies under which plaintiff in error, Houston & Texas Central Railroad Company, claims under and in accordance with the said acts of February 16th, 1861, December 16th, 1863, May 28th, 1864, and November 15th, 1864, whereby said plaintiff in error was deprived of its property without due process of law, contrary to the Constitution of the United States.

Tenth.

The said court of civil appeals erred in deciding in favor of the validity of the action of the State of Texas, which, if held valid, deprived said plaintiff in error of property without due process of law.

Eleventh.

The said court of civil appeals erred in sustaining the action of the State of Texas in depriving said plaintiff in error of property, to wit, valid treasury warrants issued under authority of said State of Texas, without due process of law by taking such private property for public uses without compensation therefor.

Twelfth.

The said court of civil appeals erred in reforming and affirming the judgment of the district court in and for Travis county, Texas (fifty-third judicial district), in said cause and in not reversing said judgment and rendering the same in favor of plaintiffs in error or remanding said cause to said district court.

445 Wherefore plaintiffs in error, Houston & Texas Central Railroad Company, C. P. Huntington, Thomas H. Hubbard, W. D. Cleveland, Sam. Allen, and C. Lombardi, pray that the judgment of said court of civil appeals be reversed and said cause be remanded, and for such further proceedings as law and justice may require.

JOSEPH PAXTON BLAIR,
JAS. A. BAKER,
R. S. LOVETT,
Attorneys for Houston & Texas Central Railroad Company.
C. P. HUNTINGTON,
THOMAS H. HUBBARD,
W. D. CLEVELAND,
SAM. ALLEN, AND
C. LOMBARDI,
Plaintiffs in Error.

(Endorsed:) Houston & Texas Central R. R. Co. *vs.* State of Texas. Assignment of errors in United States Supreme Court. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, April 25, 1898. R. H. Connerly, clerk.

Order of Court of Civil Appeals Sending up Original Papers.

HOUSTON & TEXAS CENTRAL RAILROAD COMPANY
vs.
STATE OF TEXAS. } No. 1714.

Appeal from Travis county.

In the above styled and numbered cause, heretofore pending in the court of civil appeals of the third supreme judicial district of

Texas, and in which the chief justice of said court has granted
446 a writ of error in said cause in order to carry the same to the Supreme Court of the United States, the clerk of said court of civil appeals is hereby directed and ordered to make up the record and transcript in said cause by copying in full the original record now on file in this court, and to include as a part of said record that portion of the transcript now on file in this court which contains the list of State treasury warrants which by agreement of counsel in the case was considered and acted upon by the court of civil appeals as a part of the original record filed in this court. That portion of the record containing the list of warrants need not be copied into the transcript to be prepared by the clerk, but shall go up in its original form as a part of the record in the cause, and attached to the same and as a part of the record there shall be appended to the same certified copies of all orders, judgments, and decrees rendered and entered in said cause by the court of civil appeals and the supreme court of Texas, together with certified copies of all opinions delivered by the courts in said cause.

It is further ordered that the clerk of this court file the petition for writ of error, which has this day been granted in this cause, together with the bond, which has been approved, and the assignments of errors accompanying same.

Witness the official signature of H. C. Fisher, the chief justice of said court, together with the seal thereof, this the 26th day of April, A. D. 1898.

[SEAL.] H. C. FISHER,
Chief Justice Court of Civil Appeals of the Third Supreme Judicial District of Texas.

(Endorsed:) No. 1714. Houston & Texas Central R. R. Co. *vs.* The State of Texas. Appeal from Travis county. Order sending up original papers. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, April 26th, 1898. R. H. Connerly, clerk.

447 *Bill of Costs in Court of Civil Appeals.*

HOUSTON & TEXAS CENTRAL RAILROAD COMPANY *vs.* STATE OF TEXAS. } No. 1714.

Appeal from Travis county.

Filing record	.50
Docketing cause	.50
Appearances	1.00
Filing briefs	1.90
Filing and entering motion	.35
Orders	2.50
Filing 10 extra papers	1.00
Continuances	.40

Judgment	1.00
Taxing costs	.50
Mandate	1.50
Recording	12.00
Certified copy of bill of costs, 2	1.50
Costs of supreme court	8.65
Transcript fee (from district court)	224.25
Notices, setting case	1.50
Notices, result of case	1.50
Notices on rehearing	1.50
Issuing 1 precept	1.00
Sheriff's fees	1.15
Copies of motion	10.50
Copies orders to supreme court	2.00
Transcript from court of civil appeals to United States Supreme Court	271.20
Total	$547.90

448 *Clerk's Certificate.*

Clerk's office, court of civil appeals, at Austin.

I, R. H. Connerly, clerk of the court of civil appeals for the third supreme judicial district of the State of Texas, hereby certify that the foregoing 447 pages contain true and correct copies of the proceedings had in the district court of Travis county in this court and in the supreme court of Texas in the case of The Houston & Texas Central Railroad Company *v.* The State of Texas as the same appear from the files of said cause in this court.

Witness my signature and the seal of said court, at office, in the city of Austin, this the 10th day of May, A. D. 1898.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY, *Clerk.*

449 HOUSTON AND TEXAS CENTRAL RAILROAD COMPANY *vs.* THE STATE OF TEXAS. } No. —.

To any justice of the Supreme Court of the United States or the chief justice of the court of civil appeals in and for the third supreme judicial district of Texas:

Your petitioner, Houston and Texas Central Railroad Company, is a railroad corporation created under and by virtue of the laws of the State of Texas, and C. P. Huntington, Thos. H. Hubbard, W. D. Cleveland, Sam'l Allen, and C. Lombardi respectfully represent that in the above numbered and entitled cause, then pending therein on appeal from the district court of Travis county, and wherein petitioner, Houston and Texas Central Railroad Company, was the only party appellant and said Huntington, Hubbard, Cleveland,

Allen, and Lombardi were the sureties on its appeal bond and The State of Texas was the only appellee, the court of civil appeals in and for the third supreme judicial district for the State of Texas on the 9th day of June, 1897, reformed and as reformed affirmed a judgment in said cause rendered on the 29th day of February, 1896, by the fifty-third judicial district court in and for Travis county, Texas, in favor of The State of Texas as plaintiff and against your petitioner as defendant in said district court and rendered judgment against said Huntington, Hubbard, Cleveland, Allen, and Lombardi, its sureties, for all costs of suit; that thereafter and in due time your petitioner filed in the said court of civil appeals a motion for rehearing, which was thereafter, on the 3rd day of November, 1897, overruled and denied; that thereafter and in due time your petitioner applied in due form and as authorized by law to the supreme court of the State of Texas for a writ of error in said cause to the said court of civil appeals, which application was thereafter, to wit, on the 28th day of February, 1898, by said supreme court denied and the writ of error prayed for by
450 petitioner refused; that petitioner then applied in due form and in due time to the said supreme court for a rehearing, which application was thereafter, to wit, on the 24th day of March, 1898, denied; whereupon the said judgment of the said court of civil appeals, which is the highest court of said State in which a decision in said suit could be had, became and is final.

And petitioners say that they are aggrieved by the said judgment and proceedings in said suit, and that in the said judgment and proceedings had prior thereto in said cause errors were committed to the prejudice of petitioners, because they say there was in said suit drawn in question the validity of a statute of or an authority exercised under the United States and the decisions in said suit was against their validity, and there was drawn in question the validity of a statute or constitution of or an authority exercised under a State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision in said suit was in favor of their validity, and that titles, rights, privileges, and immunities were in said suit claimed by petitioners under the Constitution and statutes of and commissions held and authority exercised under the United States and the decision in said suit was against the titles, rights, privileges, and immunities specially set up and claimed therein by petitioners under such Constitution, statutes, commissions, and authority, as will hereinafter more fully appear.

Your petitioners say that this suit was instituted on the 8th day of December, 1895, in the fifty-third judicial district court in and for Travis county, Texas, by the attorney general of Texas, in the name and on behalf of The State of Texas, as plaintiff, against petitioner railroad company, as defendant, upon which date the plaintiff State filed its original petition in said district court, praying judgment against said petitioner, as defendant, for the sum of $86,655.90, with six per cent. per annum interest thereon, payable semi-annually, from May 1st, 1879, to

the commencement of said suit, with legal interest on said interest from the time the same was payable, alleged to be the balance due upon certain bonds in said original petition described and therein alleged to have been made, executed, and delivered by a railroad corporation known as the Washington County
451 Railroad Company to the plaintiff State for a part of the special school fund of the State of Texas established and created under and by virtue of an act of the legislature of the said State entitled "An act to establish a system of schools," approved January 31st, 1854, alleged to have been loaned the said railroad company under and by virtue of an act of the legislature of said State entitled "An act to provide for the investment of the special school fund in the bonds of railroad companies incorporated by the State," approved August 31st, 1856, and praying judgment against petitioner railroad company as defendant; also for the sum of $411,935.84, with six per cent. per annum interest thereon, payable semi-annually, from the first day of May, 1894, to the commencement of said suit, with legal interest on said interest from the time same was payable, alleged to be the balance due upon certain bonds in said original petition described and therein alleged to have been made, executed, and delivered by "the Houston and Texas Central Railway Company" to the plaintiff State for a part of the said special school fund of the State of Texas alleged to have been loaned the said railway company under and by virtue of said act of August 13, 1856, and praying the foreclosure of a lien alleged in said original petition upon the railroad and property of petitioner therein described, which the said plaintiff State alleged petitioner railroad company had acquired from the said Washington County Railroad Company and from the said "The Houston and Texas Central Railway Company," subject to the said lien; that reference was made in said original petition to an act of the legislature of the said State entitled "An act for the relief of railroad companies indebted to the State for loans from the special school fund," approved August 13th, 1870, whereby railroad companies indebted to the special school fund were required, in order to avoid foreclosure and sale of their property for past delinquencies, to pay on November 1, 1870, six months' interest on the aggregate amount due on account of said loans, principal and interest, as said aggregate amount stood on the first day of May, 1870, and, in addition, one per cent. upon said aggregate amount to be applied towards the sinking fund, and should thereafter pay into the treasury of the State six months' interest and one per cent. on account of
452 the sinking fund, semi-annually, on the first days of May and November in each year, and it was alleged in said original petition that the aggregate amount due by the said Washington County Railroad Company on account of said loan to it, as said aggregate amount stood on May 1, 1870, was $103,840.01, and that the aggregate amount of the indebtedness of the Houston and Texas — Railway Company to the State on account of said loan to it, as said aggregate amount stood on May 1st, 1870, was $657.324.35, and it was further alleged in said original petition that

by payments made by or on behalf of said Washington County Railroad Company from November 1, 1870, to May 1, 1879, inclusive, its aforesaid indebtedness had been reduced to $86,655.90, and that no payments on account thereof had been made since May 1st, 1879, and that by payments made by or on behalf of the said "The Houston and Texas Central Railway Company" from November 1, 1870, to November 1, 1893, inclusive, its aforesaid indebtedness had been reduced to $411,935.84, and that no payments on account thereof had been made since November 1st, 1893.

Your petitioners aver that it did not in any way appear from the statement by said plaintiff State of its own claims in said original petition and did not elsewhere in and by said original petition in any manner appear that the said suit was one arising under the Constitution or laws of the United States or treaties made under their authority, but the character of said suit and the parties thereto and the effect of the averments of said original petition were as hereinabove alleged and not otherwise.

Your petitioners further say that on the said 8th day of December, 1894, upon the filing of the plaintiff State's said original petition, citation duly issued in said cause and was served upon petitioner railroad company as defendant therein, in obedience to which said petitioner, as such defendant, was required under the laws of the State of Texas to answer the said original petition on the 8th day of January, 1895, and, being so required, said petitioner, as such defendant, did, on January 7, 1895, file its original answer to said original petition, and thereafter, on March 15th, 1895, petitioner, as said defendant, as authorized by the laws of the State of Texas and with leave of said district court of Travis county,
453 filed in said cause its first amended original answer in lieu of and as a substitute for its original answer aforesaid; that, in addition to a general demurrer to and a general denial of the allegations in said original petition contained, the said answer pleaded in defense to the State's demand that certain payments on account of the said loans of said school fund had been made by the Washington County Railroad Company during the years 1864 and on May 11, 1865, and by the Houston and Texas Central Railway Company during the year 1864, in the treasury warrants of the State of Texas, as authorized by certain laws of the State enacted in 1863 and 1864, hereinafter referred to, which payments in treasury warrants as aforesaid had been received and accepted and credit given therefor on the books of the State by the proper officers of the State, as they were authorized and required by the said laws of the State to do, and that by virtue and means of said payments and of the subsequent payments admitted in said original petition of the State to have been made the entire indebtedness of said railroad companies on account of said loans of said school fund had been fully paid and discharged; that it thus appeared that the real nature of the State's demand and the real object of her suit was to set aside and have declared null the payments made as aforesaid in treasury warrants of the State and to recover again the portion of the said indebtedness which

had been once discharged by said payments; that the said first amended answer as well as the original answer, of which it took the place, after referring to the legislation of the State of Texas creating the special school fund and authorizing the loan thereof to certain railroad corporations and to the loan of said school fund to the Washington County Railroad Company and to the Houston and Texas Central Railway Company, and the execution and delivery of the bonds of said companies in return therefor, and to payments made by them on account thereof at various dates down to August 31st, 1860, inclusive, made the following averments:

454 6. That before the next payment of principal or interest upon said loans became due, either by the said Houston & Texas Central Railway Company or by the Washington County Railroad Company, and early in the year 1861, the civil war between Texas and the other States of the Southern Confederacy and the United States began, and as a result of the commencement of such war the business of said railway companies, in common with all other business and enterprises of the State, became paralyzed and said railway companies rendered utterly unable to pay either the interest or sinking fund upon said loans as the same matured; that recognizing this, and in view of the distressing condition of the country at that time, the State of Texas passed an act which was approved Jan. 11, 1862, entitled "An act for the relief of certain railroad companies of the State of Texas," which provided that the payment of all interest and the two per cent. sinking fund due and to become due on the bonds issued by the several railroad companies of the State of Texas for loans from the special school fund should be and the same was thereby extended until the first day of January, 1864, or until six months after the termination of the then existing war between the Confederate States and the United States of America, should it terminate before said 1st day of January, 1864, and provided further that said *act* should in nowise impair the prior lien which the State then held upon any railroad for the payment of the loans and interest then due or to become due by said roads to the State.

7. That on account of the scarcity of money, the disturbance of trade, and the practical suspension of business as a result of the then prevailing war, the State of Texas was unable to collect the taxes necessary to the support of the State government or to meet its outstanding obligations, and had then outstanding its obligations in the form and of the character of warrants drawn by its comptroller on the State treasurer for claims and demands against the State for which the legislature had theretofore made appropriations, but which the treasurer was unable to pay for lack of funds, when, for the purpose of aiding in the maintenance of its credit, on the 16th day of December, 1863, the legislature of Texas passed an act entitled "An act authorizing the comptroller of the State to receive from railroad companies in this State the interest that may now be due on their bonds," which act was approved December 16th, 1863, and was as follows:

"SECTION 1. Be it enacted by the legislature of the State of Texas:

That the comptroller of the State be and he is hereby authorized to receive from the railroad companies in this State who are indebted to the special school fund all interest on their bonds that may now be or hereafter become due, provided the same is tendered in State bonds or in State treasury warrants previous to the meeting of the next regular session of the State legislature.

"SECTION 2. That for all sums so paid in the comptroller and treasurer shall issue to the special school fund the bonds of the State, bearing 6 per cent. interest.

"SECTION 3. This act to take effect from its passage."

Under like circumstances and for the same object the legislature of Texas passed an act entitled "An act amending an act authorizing the comptroller of the State to receive from railroad companies in this State the interest that may now be due or hereafter become due on their bonds," which act was approved May 28th, 1864, and is as follows:

"SECTION 1. Be it enacted by the legislature of the State of Texas: That the provisions of the act of which it is amendatory shall not apply to railroad companies that fail or refuse to receive State bonds or State treasury warrants at par for freight or passage at the prices of rates established by law."

455 SECTION 2. That whenever satisfactory evidence is produced or furnished to the comptroller of the State that any railroad company has failed or refused to receive the State bonds or State treasury warrants at par for freights or passage at the rates established by law, he is required to refuse to receive the State bonds or treasury warrants for the interest due by said railroad upon its bond.

SECTION 3. That the president of any railroad in this State be and he is hereby required to post in a conspicuous place in the railroad offices and in the passenger cars the provisions and terms of this act under the penalty of $100 to be recovered for the benefit of the State by suit before any court of competent jurisdiction upon information of any party.

SECTION 4. That all laws or parts of laws conflicting with this act be and the same are hereby repealed and that this act take effect from and after its passage."

Under similar circumstances attending the passage of each of the two acts just above recited and for the same purpose the legislature of the State of Texas passed an act entitled "An act to authorize railroad companies to discharge their indebtedness to the special school fund with the treasury warrants and bonds and coupons of the State," which act was approved and became a law November 16th, 1864, and is as follows:

"Be it enacted by the legislature of the State of Texas: That the railroad companies of this State that are indebted to the special school fund, shall continue to be allowed the privilege of paying the interest due said fund in the treasury warrants and bonds and coupons of the State; and may also discharge the whole or any part of the principal of their indebtedness to that fund (in the same manner), provided such railroad companies shall satisfy the comptroller that

the treasury warrants and bonds and coupons of the State are received by them at par with specie for freight and passenger travel.

That all treasury warrants and bonds and coupons of the State so received into the State treasury, shall be cancelled; and the comptroller shall issue the bonds of the State, bearing six per cent. interest to the special school fund for the amount so paid in; and this act shall take effect from its passage."

8. This defendant says that upon the passage of the above-recited act approved December 16th, 1863, and in reliance upon the agreement and obligation of the State evidenced thereby, and upon the pledge of the State thereby given to receive its bonds and treasury warrants from them and other railroad companies then indebted to the special school fund in payment of all interest on their bonds then or thereafter to become due under the conditions in said act specified the said Houston & Texas Central Railway Company and the said Washington County Railroad Company acquired for valuable and adequate considerations the so-called treasury warrants of the State of Texas referred to and specified in said act, intending to pay and tender to the comptroller of the State of Texas in payment of the interest on their indebtedness to the State of Texas on account of said special school fund loan within the time and upon the conditions specified in said act and did tender and pay the same to said comptroller upon the dates hereinafter specified. And upon the passage of the above-recited acts approved May 28th, 1864, and November 16th, 1864, and in reliance upon the agreement and obligations of the State evidenced thereby, and upon the pledge of the State thereby given to receive its bonds and treasury warrants from them and other railroad companies then indebted to the special school fund in payment of all interest on their bonds then or thereafter to become due as provided by the aforesaid act of May 28th, 1864, and upon the principal of said indebtedness as well, as provided by the aforesaid act of November 15th, 1864, and under the conditions in said act specified, the Houston & Texas Central Railway Company and the Washington County Railroad Company
456 each received said bonds and State treasury warrants at par for freight and passage at the rates then established by the law, and the presidents of each of said companies posted in a conspicuous place in the railroad office- and in the passenger cars of said companies the provisions and terms of the aforesaid act of May 28th, 1864, and satisfied the comptroller of the State that such treasury warrants and bonds and coupons of the State were so received by them at par with specie for freight and passenger travel, the sole inducement and consideration prompting said railroad companies to receive such treasury warrants at par for freight and passenger fare on their said railroads being the promise and agreement of the State of Texas evidenced by the aforesaid laws to receive the same in payment of the interest and principal of the aforesaid indebtedness of said companies to the State.

9. That having acquired the same for a valuable consideration, as hereinbefore stated, and having received the same, together with the bonds and coupons of the State at par, in payment for freight and

passenger fares of their respective railroads, the said Houston & Texas Central Railway Company, as it was authorized to do by the above-recited acts, tendered, delivered, and paid to the comptroller of the State of Texas, in payment of interest then due on its aforesaid indebtedness to the State of Texas, the following sums in the treasury warrants of the State of Texas upon the dates specified, to wit:

On January 20th, 1864,	the	sum	of	$23,466.76
" March 30, 1864,	"	"	"	6,670.00
" April 19, 1864,	"	"	"	15,009.92
" " " "	"	"	"	4,000.00
" July 13, 1864,	"	"	"	31,660.69
" August 20, 1864,	"	"	"	2,000.00
" " 24, 1864,	"	"	"	22,966.98
				$105,774.35

And the Washington County Railroad Company, as it was authorized to do by the above-recited acts, tendered, delivered, and paid to the comptroller of the State of Texas, in payment of interest then due on its aforesaid indebtedness to the State of Texas in the treasury warrants of the State of Texas, the sum of $12,755.41 on the 11th day of July, 1864, and the sum of $2,790.99 on the 25th day of August, 1864, and the sum of $3,880.80 on the 11th day of May, 1865, making a total of $19,427.20, and on the principal of its aforesaid indebtedness to the State of Texas the sum of $27,663.00 on the 11th day of May, 1865, each of which sums so tendered, paid, and delivered in such treasury warrants by the Houston & Texas Central Railway Company and by the Washington County Railroad Company, respectively, as aforesaid, were received and accepted by the comptroller and treasurer of the State of Texas as they were authorized and required by the above-entitled acts to do, and credit therefor was then and there duly given to said Houston & Texas Central Railway Company and to the Washington County Railroad Company, respectively, by the said comptroller and treasurer upon the books of their respective departments.

That upon the payment of the treasury warrants by said railway companies and the receipt thereof by the comptroller and treasurer, as aforesaid, the said warrants were cancelled as authorized and required by the above-recited acts, and thereupon the comptroller and treasurer, as required by the above-recited acts, issued the bonds of the State bearing 6 per cent. interest to the special school fund for the amounts so paid by said railway companies in such treasury warrants.

10. This defendant further says that by the passage of the above-recited acts entitled, respectively, "An act authorizing the comptroller of the State to receive from the railroad companies in this State the interest that there may now be due on their bonds," approved December 16th, 1863, and "An act amending an act authorizing the comptroller of the State to receive from the railroad companies in this State the interest that there may now be due or hereafter become due on their bonds," approved May 28th, 1864, and "An act to authorize rail

road companies to discharge their indebtedness to the special
457 school fund with the treasury warrants and bonds and coupons of the State," approved November 16th, 1864, for the purpose of paying its current expenses and to induce them to acquire such treasury warrants for a valuable consideration and in lieu of money for freight and passenger fares, thereby aiding in maintaining its credit, the State of Texas contracted and agreed with the said Houston & Texas Central Railway Company and with the Washington County Railroad Company, respectively, to accept and receive from them, upon the terms and conditions in said act specified and on said account, the treasury warrants of said State paid to the comptroller and treasurer of the State by said railroad companies on account of the principal and interest due upon said school fund loan, as hereinbefore alleged, and upon the acceptance of the terms and conditions of said act by each of said railroad companies, by acquiring for a valuable consideration and by receiving the State bonds and the State treasury warrants at par with specie for freight and passenger fares at the rates established by law and by satisfying the comptroller of the State that they had done so, as hereinbefore alleged, said acts immediately became and there was created a valid and binding contract by and between the State of Texas and each of said railway companies inuring to the benefit of this defendant that the State of Texas would receive as it did receive from each of said railway companies the treasury warrants of said State paid to it by each of said railway companies, as hereinbefore alleged, on account of the interest and principal due by them respectively upon said school fund loan, and would give as it did at the time give to each of said railway companies credit for the amount so paid in such warrants by them, respectively, upon principal and interest due upon said loan, as hereinbefore alleged, which contract, this defendant says, was within and in all respects entitled to the protection of article 1, section X, of the Constitution of the United States, to the effect that no State shall pass any law impairing the obligation of contracts; and any act or law of the State of Texas or act of any officer or department of its government or any decision of any of its courts which denies or which may deny said railway companies and each of them and this defendant full credit for the sum and amount of such treasury warrants, as hereinbefore stated, and as paid by said railway companies on their said indebtedness on account of said school fund loan, this defendant alleges is contrary to and in violation of said provision of the Constitution of the United States, to the effect that no State shall pass any law impairing the obligation of contracts.

11. This defendant further says that the said treasury warrants paid by said railway companies, as hereinbefore alleged, on account of the principal and interest due by them respectively on their said indebtedness to the State of Texas for said school fund loan were made by them and accepted by the said State through its duly authorized officers without objection as valid and lawful payments, and for which said railway companies were entitled and for which they were given credit upon the books of the State of

Texas in pursuance of valid laws passed by said State in the exercise of its sovereign power, to which said railway companies and
458 all persons residing or being within its territory were subject and according to the laws of said State as then existing and expounded by the courts and all departments of the State government and as enforced by it and, as then actually enforced, observed in Texas, each of such payments in such treasury warrants were, when made, lawful and valid and were made by said railway companies and accepted by the State of Texas as lawful and valid; and when such treasury warrants were required and received by said railroad companies, as hereinbefore alleged, and by them paid to and received by the State of Texas without objection as just and lawful payments upon said indebtedness of said railroad companies to said State, and credit therefor was duly given by the State to said railway companies, the transaction with respect to such payments became executed and the State of Texas could not lawfully thereafter, as it never should in good conscience, dispute or question the validity of such payments and the right of said railway companies to the credit therefor then given by the State of Texas and to which said railway companies were lawfully and justly entitled.

And this defendant says furthermore that the State of Texas has since said demands were made and since the close of said civil war fully recognized and ratified the validity of such payments; that it has paid in full the bonds issued by the comptroller and treasurer to the special school fund for and in lieu of said payments made by said railway companies to and received by the State in treasury warrants, as hereinbefore alleged, and the said school fund has been thereby fully reimbursed for such payments so made in said warrants.

* * * * * * *

14. That by an act of the legislature of the State of Texas entitled "An act for the relief of railroad companies indebted to the State for loans from the special school fund," approved August 13th, 1870, it was, among other things, enacted that any railroad company then indebted to the State for loans from the special school fund might avoid the sale of its railroad for the non-payment of principal or interest by the payment into the treasury of the State on the first day of November, 1870, of six months' interest on the aggregate amount due on account of said loans, principal and interest, as said aggregate amount stood on the first day of May, 1870, and by the payment in addition on said first day of November of one per cent. upon said aggregate amount, to be applied towards the sinking fund provided for by the then existing laws in respect to said loans, and by continuing to pay into the treasury of the State six months' interest and one per cent. on account of said sinking fund semi-annually thereafter on the first day of May and November in each year, and also that the State of Texas would not exact of any railroad company not thereafter in default in respect to any of the payments required in said act the payment of the principal of the debt of said company except said payments on account of the sinking fund as aforesaid, but that any company might pay the same in full

at any time on 30 days' notice to the governor, and that the lien or mortgage in favor of the State securing such debt should not attach to any extention of its existing road thereafter constructed by any of said companies.

15. That on the 15th day of August, 1870, the legislature of the State of Texas passed, notwithstanding the veto thereof by the governor, in the manner and by the number of votes required by the constitution in order that the same should become a law, an act entitled "An act for the relief of the Houston & Texas Central Railway Company," whereby, among other things, it was enacted that the Washington County Railroad Company should thereby be made and declared to be to all intents and purposes in law a part of the Houston & Texas Central Railway Company and should be under the control and management of the Houston & Texas Central Railway
459 Company in like manner as every other part of said railway, and said Houston & Texas Central Railway Company should have the right to complete and extend that part of its railway theretofore known as the Washington County railroad from Brenham to the city of Austin, and should have and enjoy all the rights, privileges, grants, and benefits that there then or should at any time thereafter be secured to any railroad company in the State of Texas by any general law, etc.; and it was also by said act provided that for the whole amount of principal and interest due to the State by the Houston & Texas Central Railway Company and the Washington County Railroad Company on the 1st day of July, 1870, the governor of the State should accept and receive from the Houston & Texas Central Railway Company the 7 per cent. land grant, sinking fund, first-mortgage, gold, interest-bearing bonds of said company issued or to be issued by virtue of a deed of trust executed by said company July 1st, 1866, and maturing on July 1st, 1891, and which deed of trust Shephard Knapp and David S. Dodge, of New York, were named and accepted as trustees; and provided, further, that the governor should, after making the exchange of bonds in said act provided for, cancel and deliver to said railway company the six per cent. bonds of said Houston & Texas Central Railway Company and of the Washington County Railroad Company then held by the State for sums borrowed from school fund, being the same bonds now sued on by the State herein; and providing also that the settlement and exchange of bonds therein provided for should be made at any time agreed upon by the governor and said railway company prior to the first day of December, 1870, and also that in making the settlement therein provided for the Houston & Texas Central Railway Company should be allowed a credit for the sums paid in the treasury warrants of the State during the years 1864 and 1865 by said company and by the Washington County Railroad Company, upon the accounts of which said sums were respectively paid by said companies, and that said sums amounted in the aggregate to $152,864.55.

And this defendant says that the 7 per cent. bonds which said act required the governor to receive from the Houston & Texas Central Railway Company in exchange for the bonds of said rail-

way company and of the Washington County Railroad Company then held by the State for sums borrowed from the school fund were duly and properly tendered by said railway company to the governor as it was authorized to do by the said act prior to the first day of December, 1870, but the then governor, E. J. Davis, refused to accept said bonds so tendered and refused to surrender and deliver or permit to be surrendered and delivered to said Houston & Texas Central Railway Company, as it was his duty to do under the aforesaid act, the bonds of said Houston & Texas Central Railway Company and of the Washington County Railroad Company then held by the State for sums borrowed by them from the said special school fund, and said governor wilfully and wrongfully refused to perform the duties enjoined upon and required of him by the aforesaid act. But this defendant says, nevertheless, that said act entitled "An act for the relief of the Houston & Texas Central Railway Company" became and was a valid law of the State of Texas, and that thereby the State of Texas expressly recognized and acknowledged the validity of the payments theretofore made by said Houston & Texas Central Railway Company and said Washington County Railroad Company in treasury warrants of the State of Texas, as hereinbefore alleged, on account of their respective indebtedness for said school fund loan.

16. This defendant further says that the aggregate amount due by the Houston & Texas Central Railway Company on account of said loan, principal and interest, as said aggregate amount stood on the 1st day of May, 1870, and as said aggregate amount stood upon the books of the State of Texas after crediting said railway company, as was done on said books, with the amounts paid as aforesaid in State treasury warrants, was $551,550, being $432,000 principal and $119,550 interest instead of $657,324.35, as charged in plaintiff's petition herein, and the aggregate amount due by said Washington County Railroad Company on account of said loan, principal and interest, as said aggregate amount stood on the first day of May, 1870, and as said aggregate amount stood upon the books of the State of Texas after crediting said railroad company, as was done on said books, with the amounts paid, as aforesaid, in State treasury warrants, was only $49,800 and not the sum of $103,840.01, as alleged in plaintiff's petition herein.

460

17. This defendant further says that after the first day of May, 1870, and after the passage of the aforesaid acts of August 13th and 15th, 1870, and on, to wit, about the 1st day of November, 1870, A. Bledsoe, comptroller, with the concurrence and approval of E. J. Davis, the then governor of the State of Texas, wrongfully and unlawfully sought to deprive the said railway companies of the credit to which they were entitled for the payments made by them, as hereinbefore alleged, on their said indebtedness in treasury warrants of the State and wrongfully sought to repudiate such payments; and in pursuance of such wrongful and unlawful purpose said A. Bledsoe, as such comptroller, wrongfully and without any authority of law sought to recharge each of said railway companies respectively upon the books of the comptroller's office with the several amounts

paid by them respectively in treasury warrants, as hereinbefore alleged, thereby falsely stating the amount of said indebtedness due by said Houston & Texas Central Railway Company on May 1st, 1870, at $657,324.35 instead of $551,550, which last-named sum was the true aggregate amount as it stood on the first day of May, 1870, and falsely stating the amount of said indebtedness due by the Washington County Railroad Company on May 1st, 1870, at $103,840.01 instead of $49,800, which latter sum was the true aggregate amount of said indebtedness as it stood on the first day of May, 1870; and thereupon said E. J. Davis, as such governor, wrongfully and without lawful authority demanded that said Houston & Texas Central Railway Company should pay on the 1st day of November, 1870, six months' interest and one per cent. as a sinking fund on $657,324.35 instead of on only $551,550, which latter sum was the aggregate amount of
461 its indebtedness as said aggregate amount stood on the first day of May, 1870, and that the Washington County Railroad Company should pay six months' interest and one per cent. as a sinking fund on $103,840.01 instead of on only $49,800, which letter was the aggregate amount of its indebtedness as said aggregate amount stood on the first day of May, 1870, and that they should continue to pay into the treasury of the State six months' interest and one per cent. on account of said sinking fund semi-annually thereafter on the first day of May and November in each year; and upon the refusal of said railroad companies to comply with said wrongful and unlawful demand of said comptroller and governor the said E. J. Davis, as governor, threatened to proceed and was in fact proceeding to advertise and sell in the manner provided in the aforesaid act- of August 13th, 1856, and of August 13th, 1870, all the railroad property and franchises of each of the said railway companies on which a lien had been created to secure the payment of the aforesaid loans to them; and the said governor being by the aforesaid act- apparently clothed with the power to make such sale and thereby irreparably injure each of said companies by casting a cloud upon the title to their property and probably by having the same taken from them by force, and being without adequate relief — such unjust action of the State of Texas through its said governor, said railway companies were forced to yield and compelled to submit to his unjust and unlawful demands, as aforesaid, and to pay the amount then demanded by him. Such unjust and unlawful demand, accompanied with like threats, coercion, and duress, was repeated by said governor and by his successors on or about the first day of May and November in each year during the times hereinafter alleged, and said Houston & Texas Central Railway Company, in obedience to such unjust and unlawful demands, threats, and coercion, had been forced and compelled by the State of Texas to pay a two per cent. per annum sinking fund and six per cent. interest upon a computed aggregate amount wrongfully claimed, as aforesaid, by the State of Texas to be due by the Houston & Texas Central Railway Company on the first day of May, 1870, of $657,324.35 instead of $551,550, the true amount, and a two per cent. per annum

sinking fund and a six per cent. per annum interest on a computed aggregate amount claimed by the State of Texas to be due by the Washington County Railroad Company of $103,840.01 instead of $49,800, the just and true amount; and said railway companies each protested throughout and at the time of each payment filed its written protest with the proper officers of the State of Texas against the unlawful demand and exactions aforesaid only because the governors of said State threatened and declared their purpose to sell the property of said railway companies to satisfy the lien claimed to secure the indebtedness of said companies to the State of Texas and to seize and take from said railway companies their said railroads and property, and this defendant says that such threat and purpose would have been carried into effect by said State had not said railway companies submitted to such unjust and unlawful demands.

462 18. This defendant further says that in obedience to the unjust, unauthorized, and unlawful demand of the State of Texas, as hereinbefore alleged, said Houston & Texas Central Railway Company was compelled to pay on account of the aforesaid indebtedness and did under protest, as hereinbefore alleged, pay to the State of Texas the several sums of money on or about the several dates specified in the statement attached hereto marked "Exhibit A," and which this defendant asks to be taken as a part hereof with the same effect as though set forth at length herein, which payments were the 6 per cent. interest and 2 per cent. per annum sinking fund upon a computed aggregate amount due as of May 1st, 1870, of $657,324.35 instead of $551,550, the true amount of the indebtedness of said railway company to the State of Texas on the first day of May, 1870; and this defendant now here pleads each of such payments as shown, and avers that they are in full satisfaction and discharge of any and all indebtedness of the Houston & Texas Central Railway Company or of this defendant on account of said school fund loan and on account of the demand asserted by plaintiff's petition herein, and that neither said Houston & Texas Central Railway Company nor this defendant is indebted or liable to the State of Texas nor is the railroad or other property of this defendant in any way bound or charged with any lien or liability to the State of Texas for or on account of such loan.

19. This defendant further says that in obedience to the unjust, unauthorized, and unlawful demand of the State of Texas, as hereinbefore alleged, said Washington County Railroad Company or the Houston & Texas Central Railway Company, with which it was consolidated, was compelled to pay on account of the aforesaid indebtedness and did under protest, as hereinbefore alleged, pay to the State of Texas the several sums of money on or about the several dates specified in the statement attached hereto and marked "Exhibit B," and which this defendant asks to be taken as a part hereof with the same effect as though set forth at length herein, which payments were six per cent. interest and two per cent. per annum as a sinking fund upon a computed aggregate amount due as of May 1st, 1870, of $103,840.01 instead of $49,800, the true amount of the

indebtedness of said railway company to the State of Texas on the first day of May, 1870, and this defendant now here pleads each of such payments so shown, and avers that they are more than sufficient to fully pay off and satisfy and are $5,331.65 in excess of any amount which the State of Texas had any right to demand or exact on account of said loan or debt and on account of said school fund loan and on account of the demand asserted by plaintiff's petition herein, and neither said Washington County Railroad Company nor said Houston & Texas Central Railway Company, with which it was consolidated, as hereinbefore alleged, nor this defendant is indebted or liable to the State of Texas nor is the railroad or other property of this defendant in any way bound or charged with any lien or liability to the State of Texas for or on account of said loan.

20. That as and when each of such payments were made by said railway companies, as hereinbefore alleged and as shown by said Exhibits A & B, the same should have been applied, by reason of the facts hereinbefore alleged, to the payment of the six per cent. interest and a sinking fund on an aggregate indebtedness of the Houston & Texas Central Railway Company on account of said loan as such aggregate indebtedness stood on May 1st, 1870, of $551,550, and no more, and to the payment of six per cent. interest and a sinking fund on an aggregate indebtedness of the Washington County Railroad Company on account of said loan, as such aggregate indebtedness stood on May 1st, 1870, of $49,800, and no more, and this defendant is entitled to have said payments (if they have not been already) so applied, and by such equitable application this defendant says that the indebtedness of the Washington County Railroad Company to the State of Texas was more than discharged, as shown by Exhibit B, hereto attached, by the payment therein shown to have been made on the 1st day of May, 1879, and the indebtedness of the Houston & Texas Central Railway Company on account of said loan was more than discharged by the payment shown in exhibit to have been made on November 9th, 1893.

463 21. This defendant further says that the road-bed, track franchise and charter rights, and other property of the said Washington County Railroad Company and of the Houston & Texas Central Railway Company, which prior thereto had acquired by purchase or consolidation said Washington County railroad, described in plaintiff's petition, and on which plaintiff claims a lien in his said petition, were sold under certain decrees of foreclosure and orders of sale rendered by the circuit court of the United States in and for the eastern district of Texas and purchased by F. P. Olcott on or about the 8th day of September, 1888, who thereafter, as authorized by the laws of the State, organized this defendant under the general laws of Texas and conveyed to it all said property and rights, and by such sale and purchase this defendant acquired and now owns all lines of railway described in plaintiff's petition herein, together with the corporate rights, franchises, and privileges of said Houston & Texas Central Railway Company and of said Washington County Railroad Company, and possesses, operates, and maintains such lines of railway, with the extensions

thereof and additions thereto since made, and is entitled to exercise such corporate rights, franchises, privileges, and immunities.

22. This defendant says that by reason of all the facts hereinbefore alleged, the payment of such treasury warrants by said railway companies, in accordance with the valid laws of the State then existing and as recognized and enforced by all departments of the State; the acceptance of such warrants willingly and without objection by the State and the giving of credit therefor at the time by the State upon its books; the enjoyment of all the benefit of such payments by the State as fully as if the same had been made in lawful money of the United States; the extinguishment of the valid and just indebtedness of the State represented by said warrants by the cancellation of the same when received as such payments, and the full acquiescence and concurrence of the State at the time and for a long time thereafter of all the facts and circumstances attending such payments, as hereinbefore alleged, represent completed and executed transactions with respect to such payments which, this defendant says, the State of Texas cannot now lawfully and should not in good conscience attempt to repudiate.

23. This defendant further says that by the passage of the acts hereinbefore referred to, and especially by the passage of the acts entitled "An act authorizing the comptroller of the State to receive from the railroad companies in this State the interest that may now be due on their bonds," approved December 16th, 1863, and an act entitled "An act amending an act authorizing the comptroller of the State to receive from railroad companies in this State the interest that *they* may now be due or hereafter become due on their bonds," approved May 28th, 1864, and an act entitled "An act authorizing railroad companies to discharge their indebtedness to the special school fund with the treasury warrants and bonds and coupons of the State," approved November 16th, 1864, and an act entitled "An act for the relief of railroad companies indebted to the State for loans from the special school fund," approved August 13th, 1870, and an act entitled "An act for the relief of the Houston & Texas Central Railway Company," passed Aug. 15, 1870, and by the acceptance of the provisions of said act by said Houston & Texas Central Railway Company and by said Washington County Railroad Company, and especially by accepting the treasury warrants of the State in payment of freight and passenger fares on their respective railroads at par with specie, as required by
464 the aforesaid acts of May 28th, 1864, and November 15th, 1864, there was created a valid and binding contract by and between the State of Texas inuring to the benefit of this defendant as the successor of said companies and the present owner of the property, against which the plaintiff seeks to enforce a lien herein, whereby the State of Texas, for the valuable consideration apparent from the transaction, agreed and bound itself to receive, as it did receive, from each of said railway companies the treasury warrants of said State, and which were paid to it by each of said railway companies, as hereinbefore alleged, on account of interest and principal

due by them respectively upon said school fund loan, and that it would, as it did at the time, give to each of said railway companies credit for each of the amounts so paid by them, which contract this defendant says was within and in all respects is entitled to the protection of article 1, section X, of the Constitution of the United States, to the effect that no State shall pass any law impairing the obligation of contracts, and which contracts this defendant says was, when made, valid and binding by the laws of the State of Texas as then existing and in force and as expounded by all departments of the State government and as administered by its courts of justice; and this defendant says that any constitutional provision, ordinance, resolution, or legislative enactment, if any there be, which directly or indirectly seeks or is intended to deprive this defendant of the benefit of such payments and credits, or seeks or is intended to authorize the State of Texas or any of its officers to violate or impair said acts or contracts, or abridge or impair any of the rights of this defendant accruing thereunder, or to recharge it with any of the payments, as hereinbefore shown, or any action of its officers or agents in any manner whatsoever in construction of such legislative enactments, or any decision by the courts of said State to the effect that this defendant is not or shall not be entitled to credit for the payments on account of said indebtedness made in treasury warrants of said State, as hereinbefore alleged, *this defendant says* are illegal, unauthorized, and void and have the effect or are intended by the State of Texas to have the effect of impairing the aforesaid contract or contracts, and are therefore violative of and contrary to article 1, section X, of the Constitution of the United States, providing in effect that no State shall pass any law impairing the obligation of contracts.

465 Your petitioners further say that afterwards, to wit, on November 16th, 1895, the plaintiff in said cause, The State of Texas, with leave of said district court of Travis county and as it was authorized to do by the laws of the State of Texas, filed its "first supplemental petition," wherein and whereby for the first time it showed by its statement of its own claim that its suit was one arising under the Constitution and laws of the United States, inasmuch as it then claimed and pleaded that the payments made, as aforesaid, by said railroad companies in State treasury warrants, which payments in connection with said admitted subsequent payments were sufficient to entirely discharge the said indebtedness and to leave no balance to be sued for, were null and void because made in treasury warrants which were alleged to constitute an emission of bills of credits, in violation of section 10, article 1, of the Constitution of the United States, and because said treasury warrants had been issued by the State of Texas under legislation passed while the State was at war with the United States and passed in aid of the so-called rebellion—that is, to assist in the prosecution of the then pending war between the Confederate States and the United States of America—and also because the money sued for was a special fund granted by the Congress of the United States for special purposes and could not be diverted by the legislature of the

State; that these grounds, upon which was based the right to demand repayment of the portion of the said indebtedness paid as aforesaid in treasury warrants, were presented by said first supplemental petition by way of demurrer to said first amended answer as matters appearing on the face of the legislation under which the said treasury warrants were issued and the use thereof in discharge of said indebtedness was authorized, and also by affirmatively alleging that said treasury warrants were issued to circulate as money and constituted bills of credit, in violation of section 10 of article 1 of the Constitution*al* of the United States and of a similar provision in the constitution of the State of Texas, and that said treasury warrants were issued and the legislation authorizing their issue and use was passed by the State of Texas to aid the so-called rebellion and to assist in the prosecution of the then existing civil war, as aforesaid.

466 Your petitioners further say that promptly after the filing of said first supplemental petition, on November 16th, 1895, to wit, on the same day, petitioner railroad company filed its application to remove the cause into the circuit court of the United States for the western district of Texas, and accompanied the same with a bond in form and amount and conditioned as required by law; that in said petition to remove the nature of said cause and the proceedings had were stated substantially as above, and it was further truthfully averred that the nature and only object and purpose of said suit was to set aside and avoid the payments in State treasury warrants, as aforesaid, by said railroad companies to the State on the bonds and former indebtedness described and referred to in the State's said original petition upon the grounds and for the reasons presented and set forth by the State in its said first supplemental petition, and that the State's right of action against petition- as defendant in said suit arose, if at all, under the Constitution and laws of the United States referred to and invoked by the State in its said first supplemental petition, and that the plaintiff's right of action and defendant's liability in said suit depend upon the construction of the Constitution and laws of the United States in their effect upon and application to the issues in said suit presented for the first time by and in said first supplemental petition filed as aforesaid; and it was further truthfully averred that the only pleadings filed in said suit by the plaintiff State were the said original and the said first supplemental petition, and that the fact that said suit arose under the Constitution and laws of the United States did not in any way appear from the said original petition or from plaintiff's statement of its claim in any manner until the filing by plaintiff of its said first supplemental petition, on November 16th, 1895, as before alleged, and until then the right of defendant to remove the cause into the Federal court upon the ground that it was a suit arising under the Constitution and laws of the United States or upon any other grounds whatsoever did not exist; and it was further truthfully averred in said petition to remove that the said suit had never been tried and no question therein had ever been determined in or by said district court, but that the same had

been continued or passed by consent of the parties without
467 trial and without ever having been called for trial and had not been called or set for trial at the then term of court, and that petitioner, as defendant in said suit, had not as yet been required by the laws of the State or by any rule of court to answer or plead to said first supplemental petition; that said petition to remove contained the usual formal averments of such a petition and closed with appropriate prayer to the said district court to proceed no further therein except to make the order of removal required by law and to accept the petition and bond and to cause the record to be removed into said circuit court of the United States in and for the western district of Texas.

And petitioners say that said application to remove the cause into the said circuit court of the United States was by said district court of Travis county refused and denied; to which ruling petitioner, railroad company, as defendant in said cause, excepted and reserved and took a bill of exceptions; that the said district court proceeded with the trial of said cause, and its action and ruling in denying said application to remove was on appeal therefrom, as aforesaid, affirmed by the said court of civil appeals by the judgment herein complained of, whereby petitioners say that said court decided against the title, right, privilege, and immunity so specially set up and claimed by petitioner under the constitution and statutes of the United States and commissions held and authority exercised under the United States.

Petitioners further say that after the denial of the application to remove, as aforesaid, the plaintiff State filed its first amended supplemental petition, setting forth substantially the same matters pleaded in its said first supplemental petition, and that in response to the said supplemental petitions petitioner railroad company filed its first supplemental answer, excepting to plaintiff's pleadings upon various grounds, not necessary to detail here, and by said supplemental answer it joined issue on all the allegations of plaintiff's said supplemental petition, and, by way of special pleas, denied that the treasury warrants used in making such payments were issued as bills of credit to circulate as money or in aid of the said rebellion, and averred that they were issued
468 in the exercise of the powers and in the performance of the duties conferred upon the comptroller of the State by the laws of Texas ever since its annexation to the United States and in the ordinary transactions of the business of the government and to pay appropriations duly made by the legislature for the ordinary and lawful purposes of the government, which governmental functions, duties, and powers were not destroyed or suspended by the secession of the State of Texas, in violation of the compact between the States embodied in the Constitution of the United States; and it was also averred in said supplemental answer that if it were true, as alleged by the State, that the treasury warrants used in making said payments were issued as bills of credit to circulate as money, in violation of the Federal and State constitutions, or were issued in aid of the rebellion they were so issued by plaintiff, The State of

Texas, and put in circulation by it among its citizens, who were induced and practically coerced by the State to accept the same, the State by its own act in waging war with the United States having driven out of circulation all money authorized by the Federal Constitution; that to permit the State to avail itself of the grounds of nullity alleged by it against the payments in question would be to allow it to deprive petitioner of its rights under the Constitution of the United States, including the free enjoyment of the monetary system and circulating medium established thereunder, and to profit by its wrongful act in so doing.

Petitioners say that the said district court of Travis county and the civil court of appeals denied and overruled all the defenses hereinabove referred to and gave judgment in favor of the State as prayed for; that the said district court of Travis county held that the treasury warrants and the payments made thereunder were null and void because they constituted bills of credit and were issued to circulate as money and because they were issued in aid of the rebellion, and the said civil court of appeals affirmed said judgment because it held that said treasury warrants were bills of credit issued to circulate as money, in violation of the State constitution; that this holding of the civil court of appeals was tanta-
469 mount to holding that the treasury warrants in question were issued in violation of the Constitution of the United States, because the prohibition in that Constitution against the emission of bills of credit was identical in legal effect with the prohibition in the State constitution against the issuance of treasury warrants to circulate as money and was the paramount law rendering the similar prohibition in the State constitution useless and unnecessary.

And the said district court by its judgment and the said court, of civil appeals by its judgment in this cause, contrary to subdivision 1 of section X of the Constitution of the United States, gave effect to and sustained the validity of the constitution of Texas adopted in 1869 and the statutes of Texas approved August 13th, 1870, as impairing the obligation of the contract previously entered into between the railway companies under which plaintiff- in error claims and the State of Texas under and by virtue of the aforesaid acts approved February 9th, 1861, December 16th, 1863, May 28th, 1864, and November 15th, 1864, and also sustained the validity of the action of the State of Texas through the comptroller and governor in canceling and discharging credits given for payments made by said railway companies under and in accordance with the said acts of 1861, 1863, and 1864, whereby plaintiffs in error were deprived of property without due process of law, contrary to section 1, article XIV, of the amendments of the Constitution of the United States; and the said courts by their said judgments decided against the validity of an authority exercised under the United States drawn in question in this cause and against the title, rights, privileges, and immunities specially set up and claimed by
470 plaintiffs in error under the Constitution and statutes of — an authority exercised under the United States and in favor of the validity of statutes of and authorities exercised under the State

of Texas drawn in question in this cause on the ground of their being repugnant to the Constitution and laws of the United States, and decided in favor of the validity of action of the State of Texas depriving plaintiff- in error of property without due process of law and sustaining the action of said State of Texas in taking the property of plaintiffs in error without due process of law and for public use without compensation, contrary to the Constitution of the United States.

Your petitioners refer to the assignments of errors filed herewith and pray that the same be considered for the purposes of this petition as a part hereof, and further pray that a writ of error may be allowed and issued herein to the said court of civil appeals in and for the third supreme judicial district of the State of Texas, which now has the record in said suit, for the removal of said cause into the Supreme Court of the United States, to the end that errors in said judgment and the proceedings in said cause may be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, and that the transcript of the record, proceedings, and papers in said cause, duly authenticated, may be sent to the said Supreme Court of the United States.

JOSEPH PAXTON BLAIR,
JAS. A. BAKER,
R. S. LOVETT,
Attorneys for Houston & Texas Central Railroad Company.
C. P. HUNTINGTON,
THOMAS H. HUBBARD,
W. D. CLEVELAND,
SAM. ALLEN,
C. LOMBARDI, *Petitioners.*

AUSTIN, TEX., *April 25th*, 1898.

Allowed with supersedeas upon furnishing bond in the sum one hundred thousand dollars, conditioned as the law directs.

H. C. FISHER,
Chief Justice of the Court of Civil Appeals, Third Supreme Judicial District of Texas.

Filed in court of civil appeals, 3rd sup. jud. dist., Austin, Texas, April 26th, 1898.

R. H. CONNERLY, *Clerk.*

471 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of civil appeals in and for the third supreme judicial district of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of civil appeals in and for the third supreme judicial district of the State of Texas, before you or some of you, being the highest court of the said State

in which a decision could be had in the said suit between Houston & Texas Central Railroad Company, appellant, and C. P. Huntington, Thomas H. Hubbard, W. D. Cleveland, C. Lombardi, and Sam. Allen, its sureties, and The State of Texas, appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein a title, right, privilege, or immunity was claimed under the Constitution or a treaty or statute of or commission held or authority exercised under the United States and the decision was against the title, right, privilege, or immunity specially set up or claimed under such Constitution, treaty, statute, commission, or authority, a manifest error hath happened, to the great damage of said Houston & Texas Central Railroad Company and C. P. Huntington, Thomas H. Hubbard, W. D. Cleveland, C. Lombardi, and Sam. Allen, as by their complaint appears, we, being willing that error, if any hath
472 been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25 day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk Circuit Court of the United States,
Western District of Texas.

Allowed by—

H. C. FISHER,
Chief Justice of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas.

Filed in court of civil appeals, 3rd sup. jud. dist. of Texas, Austin, Texas, April 26th, 1898.

R H. CONNERLY, *Clerk.*

473 UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of civil appeals in and for the third supreme judicial district of Texas, wherein Houston & Texas Central Railroad Company and C. P. Huntington, Thomas H. Hubbard, W. D. Cleveland, C. Lombardi, and Sam. Allen are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 25th day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

H. C. FISHER,
Chief Justice of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas.

Received this citation at my office, in the city of Austin, Texas, on the 26th day of April, 1898, at 1 o'clock a. m., and executed the same by delivering to Charles A. Culberson, governor of the State of Texas, at Austin, Texas, on the 26th day of April, 1898, at 10 o'clock a. m., and to M. M. Crane, attorney general of the State of Texas, near Taylor, Texas, on the 26th day of April, 1898, at 2.30 o'clock a. m., each in person, a true copy of this citation.

GEORGE L. SIEBRECHT,
United States Marshal for the Western District of Texas,
By F. H. LANCASTER, *Deputy.*

Fees.

Service on governor	2.00
Service on att'y gen'l	2.00
No mileage	
Total	4.00

Filed in court of civil appeals, 3rd sup. jud. dist. of Texas, Austin, Texas, April 27th, 1898.

R. H. CONNERLY, *Clerk.*

Endorsed on cover: Case No. 16,890. Texas court of civil appeals, 3rd judicial district. Term No., 306. The Houston and Texas Central Railroad Company *et al.*, plaintiffs in error, *vs.* The State of Texas. Filed May 23, 1898.